U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37809035

Date: APR. 21, 2025

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a legal consultant, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish the Petitioner's eligibility for EB-2 immigrant classification or a national interest waiver. We dismissed a subsequent appeal as well as two successive combined motions to reopen and reconsider. The matter is now before us again on a third combined motion to reopen and reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the combined motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant motions that satisfy the aforementioned requirements and demonstrate eligibility for the requested benefit. Our review on motion is limited to examining our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). Accordingly, a motion to reopen and reconsider must overcome the issues discussed within our most recent decision, which is our January 2025 dismissal of the Petitioner's second combined motion to reopen and reconsider.

In our first appellate decision dismissing the Petitioner's appeal, we concluded that she did not establish eligibility for the requested EB-2 immigrant classification as an advanced degree professional. We also acknowledged her assertions that she alternatively qualified for EB-2 immigrant classification as an alien of exceptional ability but concluded that, because she did not make this claim before the Director, we would not consider it for the first time on appeal. *See Matter of J-Y-C*, 24 I&N Dec. 260, 261 n.1 (BIA 2007). Moreover, we agreed that the Petitioner did not establish eligibility for a national interest wavier as she did not meet the first prong of the analytical framework set forth in

Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016). Specifically, we determined she did not establish her endeavor of operating a legal consulting firm was nationally important because she did not demonstrate it would result in broader implications to the industry, have significant potential to employ U.S. workers, or otherwise result in substantial positive economic effects as she claimed.

As stated, the Petitioner subsequently submitted two successive combined motions to reopen and reconsider, reiterating the same or similar assertions that she made on appeal, while supplementing the record with additional articles on various topics, including general information on the legal profession in Brazil, Brazilian academics, and the Brazilian-U.S. trade relationship.

In our most recent decision dismissing the Petitioner's second combined motion to reopen and reconsider—the decision that is the subject of this motion—we concluded again that the Petitioner had not established eligibility for EB-2 immigrant classification as an advanced degree professional, and in particular, and again declined to consider the Petitioner's eligibility for EB-2 classification as an alien of exceptional ability as this claim was not made before the Director.[1] And, in regards to the Petitioner's national interest waiver request, we acknowledged the Petitioner's submission of additional articles and publications, but concluded that they did not overcome our determination that the record did not establish the national importance of her proposed endeavor. In particular, we determined that the articles established the importance of the legal industry as well as the impact of foreign investment, but they did not establish that the broader implications contributable to her specific endeavor rises to the level of national importance as contemplated in *Dhanasar*. We also concluded that the Petitioner had not established our prior decision was based on an incorrect application of law or policy at the time we issued our decision. Accordingly, we dismissed the Petitioner's combined motion to reopen and reconsider because it did not meet the regulatory requirements. *See* 8 C.F.R. § 103.5(a)(4).

On motion, the Petitioner submits a brief which is again substantially similar to the briefs submitted on appeal and in support of her previous combined motions to reopen and reconsider, along with additional industry articles and reports discussing the U.S.-Brazil trade relationships and trends and developments in Brazilian trade more generally. In addition to repeating her prior assertions made on appeal and in her motions to reopen and reconsider, the Petitioner asserts that "the previous issues were not properly addressed, still having grounds for [m]otion to [r]econsider and [r]eopen." As an example of this, she asserts that "past decisions were with certain levels of inconsistency when evaluating the evidence of record, presenting themselves unreasonable and detached from the applicable legal principles."

First, although we have reviewed the new evidence submitted, this evidence, considered together, does not establish new facts that support the reopening of these proceedings. As stated in our prior decision, while such evidence demonstrates the importance of her field, it does not establish the prospective impact of her specific endeavor. Accordingly, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion.

And, on motion to reconsider, while the Petitioner generally disagrees with our conclusions, she does not address the conclusions made in our prior motion or otherwise explain how our determination was erroneous. For example, as stated, we have continuously noted the inconsistencies regarding the

[1] *See Matter of J-Y-C*, 24 I&N Dec. 260, 261 n.1 (BIA 2007).

Petitioner's employment history relating to her claimed eligibility for EB-2 immigrant classification as an advanced degree professional, reiterating that these inconsistencies cast doubt on the reliability and sufficiency of the evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). However, rather than addressing these concerns, on motion the Petitioner continues to reiterate the same claims previously made on appeal and in her two prior combined motions to reopen and reconsider. And rather than establishing how we erred in concluding that we would not consider the Petitioner's claims of eligibility for EB-2 classification as an individual of exceptional ability, she simply states, without support, that she did claim this before the Director. Moreover, in regard to her claims of the national importance of her endeavor, the Petitioner does not acknowledge our conclusion that the prior decision did appropriately consider the broader implications of her endeavor, without erroneously focusing on the geographical breadth of her endeavor. Instead, the Petitioner submits the same assertions, verbatim, that she put forth in her prior combined motion to reopen and reconsider.

In short, the Petitioner's contentions in her current motion merely reargue facts and issues we have already considered in our previous decisions. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision"). Accordingly, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. 8 C.F.R. § 103.5(a)(4).

Based on the above, we conclude that the Petitioner's motion does not contain new facts supported by documentary evidence that overcomes the grounds underlying our previous decision, nor has she shown that our previous decision was based on an incorrect application of law or policy. Consequently, the Petitioner has not established a basis for us to reopen and reconsider that decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.