U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37801599

Date: APR. 21, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner 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 section 203(b)(2), 8 U.S.C. § 1153(b)(2).

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish that a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest. SCOPS then dismissed a subsequent combined motion to reopen and motion to reconsider. We summarily dismissed the Petitioner's appeal, and we dismissed the Petitioner's subsequent combined motion to reopen and motion to reconsider. The matter is before us again on a combined motion to reopen and motion to 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.

We incorporate by reference our analysis in our decision summarily dismissing the Petitioner's appeal and in our decision dismissing the subsequent combined motion to reopen and motion to reconsider. By way of summation, SCOPS determined that the record does not satisfy the first and third *Dhanasar* prongs. *See Matter of Dhanasar*, 26 I&N Dec. 884, 889-90 (AAO 2016). SCOPS affirmed that determination in the decision on the Petitioner's combined motion. We note that SCOPS' decision on that combined motion specifically addressed aspects of the third *Dhanasar* prong. *See id*.

The Petitioner then filed an appeal, supported by a brief. The brief generally disagreed with SCOPS' unfavorable determinations; however, the brief did not specifically identify an erroneous conclusion of law or statement of fact as to all of the dispositive grounds for dismissal addressed by SCOPS. Therefore, we summarily dismissed the Petitioner's appeal, pursuant to 8 C.F.R. § 103.3(a)(1)(v) (providing, "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.").

The Petitioner then filed a combined motion to reopen and motion to reconsider, supported by a brief. The brief discussed the first two *Dhanasar* prongs—whether the proposed endeavor may have national importance and whether the Petitioner is well-positioned to advance the proposed endeavor—but it did not discuss the third *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. We dismissed the motion to reopen because the Petitioner did not present new facts supported by documentary evidence, as required by the regulation at 8 C.F.R. § 103.5(a)(2). In turn, we dismissed the motion to reconsider because the Petitioner did not "reference any specific piece of evidence we failed to consider or otherwise demonstrate that the previously submitted evidence was sufficient to establish eligibility," as contemplated by the regulation at 8 C.F.R. § 103.5(a)(3). We further explained that, even if we had not summarily dismissed the Petitioner's appeal, we nevertheless would have dismissed it on its merits because, similar to the motion brief, the Petitioner's appeal "did not address or contest [SCOPS'] specific findings regarding the third [*Dhanasar*] prong," thereby waiving the issue, which is dispositive. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. We now turn to the current combined motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. §§ 103.5(a)(1)(i)-(ii). Therefore, we will consider new evidence on motion to reopen only to the extent that it pertains to our latest decision, which, in this case, dismissed the prior combined motion. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior combined motion. Because the motion to reopen before us does not present a new fact supported by documentary evidence material to the issue of whether we erred in dismissing the prior combined motion, we will dismiss this motion to reopen. 8 C.F.R. §§ 103.5(a)(2), (4).

We further note that most of the documentary evidence submitted in support of the motion to reopen could not otherwise establish eligibility because it is dated in 2024 and it improperly presents a set of facts—material to the Petitioner's underlying eligibility but immaterial to the latest decision in the proceeding—that did not exist when he filed the Form I-140, Immigrant Petition for Alien Workers, in October 2022. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971); *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Next, 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). As noted above, because the scope of a motion is limited to the prior decision, we will review only the latest decision in these proceedings. 8 C.F.R. §§ 103.5(a)(1)(i)-(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

In support of the motion to reconsider, the Petitioner submits a brief, which discusses the first and third *Dhanasar* prongs. However, as noted above, the Petitioner did not address the third *Dhanasar* prong in his appeal—or his prior combined motion—thereby waiving that issue. *See Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). More to the point, beyond the Petitioner's prior waiver of the dispositive issue of whether the record satisfies the third *Dhanasar* prong, the Petitioner does not address any particular law or policy we may have misapplied to any particular item of evidence of record at the time of our decision on the

preceding combined motion to reopen and motion to reconsider, which is the scope of review for this motion to reconsider. *See* 8 C.F.R. §§ 103.5(a)(1)(i)-(ii), (a)(3).

Because the Petitioner does not establish how we may have misapplied an applicable law or policy, based on the record at the time of our preceding decision, this motion to reconsider does not satisfy the requirements at 8 C.F.R. §§ 103.5(a)(1)(i)-(ii), (a)(3) and, accordingly, we will dismiss it. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.