U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30972684

Date: APR. 24, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner is a data analytics specialist who 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 (NIW) 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 Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the record did not establish that the Petitioner merits a discretionary waiver of the job offer requirement in the national interest. We dismissed her subsequent appeal and she now files a motion to reopen and a motion to reconsider that dismissal. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the Petitioner's motions.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

A motion to reconsider must: (1) state the reasons for reconsideration, (2) be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy, and (3) establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider that does not satisfy these requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

A. Motion to Reopen

Regarding the Petitioner's motion to reopen, she presents new facts and supports them with evidence that postdates the petition filing date, which was September 21, 2021. Here, the Petitioner discusses new evidence in the form of a blog post that was published in August of 2023. Although a petitioner may present new facts supported by evidence in support of a motion to reopen, in the same way that her initially provided evidence must have existed on the date she filed the petition, so must the evidence in support of a motion to reopen. Because this evidence did not exist when the petition was filed, neither it nor the Petitioner's associated claims will factor into this motion's decision. Even within a motion to reopen where a filing party can present new facts supported by evidence, they must still establish eligibility at the time they filed the petition. A petition cannot be approved at a future date after a petitioner becomes eligible under facts or evidence that did not exist when they filed the petition. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

Much of the other evidence submitted on motion also suffers from this same evidentiary shortcoming, such as a new version of her business plan she revised after we dismissed her appeal, a White House Fact Sheet, and internet printouts from the Small Business Innovation Research and Small Business Technology Transfer programs, and another from the U.S. Defense Department.

Although she offers new facts relating to areas of economic distress and claims that her endeavor "can significantly revitalize economically distressed areas in several ways," she does not establish the extent to which her "endeavor will provide jobs and boost the local economy and enhance the quality of life by increasing economic activity." We noted this same shortcoming in our appellate dismissal and her new evidence does not remedy that deficiency.

For the reasons discussed above, the documentation submitted on motion does not overcome our original decision, finding that the Petitioner did not demonstrate that her proposed endeavor met the national importance requirements as detailed within the precedent decision, *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

B. Motion to Reconsider

The Petitioner's motion does not meet the applicable requirements of a motion to reconsider because she does not establish that our decision was based on an incorrect application of law or policy. *See* 8 C.F.R. § 103.5(a)(3). In particular, the Petitioner does not cite to any statute, regulation, pertinent precedent decision, binding federal court decision, USCIS policy statement, or other applicable authority to establish that the original decision was defective in some regard. As she did not demonstrate that we incorrectly dismissed her appeal, the Petitioner did not establish that she meets the requirements of a motion to reconsider. Therefore, we will dismiss the motion to reconsider.

III. CONCLUSION

The Petitioner has not demonstrated that we should either reopen the proceedings or reconsider our decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.