U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 37801433

Date: APR. 24, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a financial manager, 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).

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. We dismissed a subsequent appeal and motions to reopen and reconsider. The matter is now before us on a second 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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). 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). 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). 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 only consider new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen. Here, the Petitioner submits articles about small businesses and entrepreneurship. However, the Petitioner does not explain how these articles contain new facts to establish that we erred in dismissing the prior motion. She also does not provide other evidence of new facts supporting her eligibility for the requested petition. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision.

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). Because the scope of a motion is limited to the prior decision, we will only review 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. On motion, the Petitioner contests the correctness of our prior decision. However, the Petitioner's contentions in the current motion largely 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").

For example, the Petitioner again argues that our decision improperly required her endeavor to be geographically national in scope per our overruled decision in *Matter of New York State Dep't of Transp. ("NYSDOT")*, 22 I&N Dec. 215 (Acting Assoc. Comm'r 1998). We explained in our previous decision that we instead correctly considered factors in the *Dhanasar* framework regarding national importance: the potential to have broader implications in her field, significant potential to employ U.S. workers, or other substantial positive economic effects in Florida or the United States. *See Matter of Dhanasar,* 26 I&N Dec. at 884, 893. Further, the Petitioner asserts that we "failed to apply the correct policy" and did so "without prior notice." But the Petitioner does not provide a basis for this claim or specify what part of our decision used an incorrect standard or policy.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, 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. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.