U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37791794

Date: APR. 29, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a construction manager and civil engineer, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability, 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).

The Director of the Texas Service Center denied the petition. We dismissed a subsequent appeal. We then dismissed a combined motion to reopen and reconsider because it was submitted untimely, citing 8 C.F.R. §§ 103.5(a)(1), 103.8(b). We dismissed two subsequent combined motions to reopen and reconsider because they did not provide new facts supported by documentary evidence or establish that we erred in dismissing the previous combined motions. The matter is now before us on a fourth 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). *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). 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). 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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

The Petitioner's present and fourth motion to reopen, again, does not address the basis for which we dismissed her most recent motion, nor does she support the instant motion with new documentary evidence. Like her prior motions, her fourth motion purports to include, as she states, "additional evidence and clarifications to substantiate my eligibility and address USCIS concerns regarding my proposed endeavor." However, the present motion revisits assertions expressed in her previous

motions concerning her purported eligibility for a national interest waiver, rather than the reasons for our dismissal of her prior motion. Because the current motion to reopen does not state new facts or provide new material, it does not satisfy the requirements of a motion to reopen and it will be dismissed. 8 C.F.R. §§ 103.5(a)(2), (4).

As to the Petitioner's present motion to reconsider, she does not address the basis of our dismissal of her most recent motion, and therefore she has not established that our prior decision was based on an incorrect application of law or policy, nor does the Petitioner address whether our decision was incorrect based on evidence in the record at the time of the decision. Since 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, the current motion to reconsider will be dismissed. 8 C.F.R. §§ 103.5(a)(3), (4).

The Petitioner's contentions in her current combined 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"). 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.