U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32844812

Date: AUG. 12, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a project manager, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding 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 Petitioner did not establish that her proposed endeavor was of national importance, nor had she established that she was well-positioned to advance the proposed endeavor, and that she had also not established that it would be beneficial to the United States to waive job offer requirements. We summarily dismissed a subsequent appeal. The matter is now before us on combined motions 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 motions.

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).

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). 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.

The latest decision, which the Petitioner contests with these motions, was our summary dismissal of her appeal. We summarily dismissed the appeal because it did not specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision by the Director. 8 C.F.R. § 103.3(a)(1)(v). On appeal, the Petitioner asserted that her case met the requirements of the *Dhanasar*

framework required for national interest waiver eligibility and that she believed specific details of her case had been overlooked. However, the Petitioner did not elaborate these claims, nor did she indicate any erroneous conclusion of law or statement of fact in the Director's decision.

On motion, the Petitioner claims that she previously provided evidence to support the three eligibility requirements for a national interest waiver and contends that the Director denied her petition in error. The Petitioner submits a new letter describing activities in her proposed endeavor and the problems they seek to address. She also submits letters of support from [redacted] a lawyer with the [redacted] and [redacted] an investment risk advisor. The Petitioner contends that this additional evidence alters the outcome of her case such that her petition should be approved.

The matters the Petitioner must first overcome within this motion are limited to the issues discussed within our most recent decision; the appeal's summary dismissal. General support that a motion must first overcome the most recent decision lies within the regulation at 8 C.F.R. § 103.5(a)(1)-(3) where it repeatedly discusses the underlying or latest decision, it limits the time one has to file a motion after the most recent decision, and it references jurisdiction resting with the entity who made the latest decision. This demonstrates that any motion must first address and overcome the most recent adverse decision before the filing party's arguments may move on to any issue that arose in a previous petition, appeal, or motion filing.

As a threshold matter, the Petitioner's motion to reopen does not contain documentary evidence of new facts establishing that our decision to summarily dismiss her appeal was in error, as required for a motion to reopen. Nevertheless, even assuming arguendo the Petitioner's motion to reopen met these regulatory requirements, it does not appear to overcome the Director's determination that the Petitioner is ineligible for the national interest waiver. Specifically, the Petitioner's motion includes insufficient and inconsistent evidence regarding the substantive nature of her proposed endeavor. The Petitioner's letter on motion states that her endeavor is the strategic integration of artificial intelligence technologies into health management systems. However, the third-party support letters instead refer to an app the Petitioner would purportedly create. These letters also use a different name for a company addressing COVID-19 compliance used by the Petitioner below. Nonetheless, because the Petitioner's eligibility for the national interest waiver was not an element in our most recent decision, our instant decision will not make a determination on this matter. *See generally INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof).

In addition, to the extent that the Petitioner's motion presents documentary evidence of new facts regarding her eligibility for the requested benefit, the Petitioner must meet eligibility requirements at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1). New facts after the filing date cannot establish eligibility as of the priority date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

Turing to the Petitioner's motion to reconsider, the Petitioner does not address our conclusion that she failed to identify an error in law or fact within the appeal brief. Instead, she asserts that she meets all

three prongs of the *Dhanasar* requirements. The Petitioner does not cite to any authorities to demonstrate that our decision to summarily dismiss her appeal was incorrect. She has therefore not met the requirements for a motion to reconsider.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established new facts relevant to our appellate decision that would warrant reopening of the proceedings. 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. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.