U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33130059

Date: AUG. 13, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner is an education 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 of the job offer requirement associated with this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Texas Service Center Director approved the Form I-140, Immigrant Petition for Alien Workers (petition), but then revoked that approval concluding the Petitioner did not establish eligibility for the national interest waiver. The Director also found that the Petitioner had willfully misrepresented material facts. *See* section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C). We dismissed a subsequent appeal and four ensuing motions. The matter is now before us on a fifth motion; a 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 motion.

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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

In the most recent decision on the fourth motion, incorporated here by reference, we acknowledged the Petitioner's statements regarding her eligibility for the national interest waiver as it related to her previous appeal and motion filings; however, we noted that our review with her fourth motion was limited to the issues discussed in our most recent decision, as is required by the regulations at 8 C.F.R. § 103.5(a)(1)–(3). As her eligibility for the national interest waiver was not an element in our decision on her third motion, we concluded that we would not consider that aspect in our decision on her fourth motion. As a result, we dismissed the Petitioner's fourth motion, further informing her of relevant case law regarding numerous motion filings based on the original petition.

Here, in her fifth motion, a motion to reconsider, the Petitioner provides a brief, in which she indicates that the "motion to reconsider is based on new evidence, including a certification letter from the previous legal counsel regarding the Petitioner's eligibility for the National Interest Waiver," and further included language from a request for evidence (RFE) issued by the Director of the Texas Service Center relating to her filing of a second Form I-140, Immigrant Petition for Alien Workers. We note that the Petitioner again is attempting to address issues that are related to decisions issued prior to our most recent decision and asks us to re-adjudicate the initial petition based upon the new evidence provided; however, she does not contend that our most recent decision was based on an incorrect application of law or policy at the time of our decision, which should be the basis for a motion to reconsider. Regarding the language included in the Director's RFE, the Petitioner's second petition is not before us at this time and is unrelated to the matter before us. 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 reconsider is dismissed.