U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20917697

Date: AUG. 26, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur in the field of technology, seeks employment-based second preference (EB-2) immigrant classification 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 (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that he is an individual of exceptional ability and that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. We 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.

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).

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.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

II. ANALYSIS

The Director denied the petition, concluding that the Petitioner did not establish that he is an individual of exceptional ability and that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The Petitioner's subsequent appeal did not identify specifically any erroneous conclusion of law or statement of fact in the unfavorable decision issued by the Director but indicated that he would submit a brief and/or additional evidence within 30 calendar days of filing the appeal. We summarily dismissed the appeal after having not received a brief or additional evidence.

A. Motion to Reconsider

The Petitioner requests we reconsider our summary dismissal because he stated in his Form I-290B the reason for the appeal and submitted an accompanying brief. Our summary dismissal, the decision at issue, stated "[w]e are summarily dismissing your appeal because it did not specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision" citing to 8 C.F.R. § 103.3(a)(1)(v). A motion to reconsider must establish that our 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). A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy.

Here, the Petitioner has not argued our summary dismissal was based on an incorrect application of law or policy. In his previous Form I-290B, signed on April 7, 2021, the Petitioner checked box 1.b. indicating "I will submit my brief and/or additional evidence to the AAO within 30 calendar days of filing the appeal." While the Petitioner claims that he submitted an accompanying brief, the record does not show that he submitted a brief at the time of filing his appeal or within 30 days of filing the appeal. At the time of our summary dismissal on August 30, 2021, no brief or other documentation specifically identifying any erroneous conclusions of law or statement of fact had been received.

In addition, the Petitioner claims that he stated in his Form I-290B the reason for the appeal. On page 6 of his previous Form I-290B, the Petitioner stated: "Decision was contrary to law and weight of evidence." However, he did not cite laws, regulations, precedent decisions, or binding policies to support the claim that the Director's decision was based on an incorrect application of law or policy. In addition, he did not identify any erroneous statement of fact provided in the Director's decision. As such, we concluded the Petitioner's statement provided in his Form I-290B alone, without a brief or additional evidence, did not specifically identify any erroneous conclusion of law or statement of fact in the Director's decision.

The Petitioner's instant motion to reconsider does not provide any reasons why he believes our prior appeal decision was based on an incorrect application of law or policy. Nor does he cite laws, regulations, precedent decisions, or binding policies. Likewise, the brief in support of the current motion lacks any cogent argument as to how we misapplied the law or policy in summarily dismissing the appeal. Instead, the Petitioner presents the same arguments he provided to the Director in response to a request for evidence and seeks reconsideration of our prior decision. Because the Petitioner has not established that our prior appeal decision was in error, we will, therefore, dismiss his motion to reconsider the matter.

B. Motion to Reopen

In support of his motion to reopen, the Petitioner offers duplicate copies of the documents previously submitted to the Director.[1] A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). The regulation at 8 C.F.R. § 103.5(a)(2) does not define what constitutes a "new" fact, nor does it mirror the Board of Immigration Appeals' definition of "new" at 8 C.F.R. § 1003.2(c)(1) (stating that a motion to reopen will not be granted unless the evidence "was not available and could not have been discovered or presented at the former hearing"). Unlike the Board regulation, we do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition.

The Petitioner does not submit new facts or evidence relevant to our decision to summarily dismiss his appeal. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." For this reason, we find that the Petitioner has not stated new facts demonstrating his eligibility for the classification or supported the new facts with documentary evidence. We will, therefore, dismiss his motion to reopen the matter. *See* 8 C.F.R. § 103.5(a)(2).

III. CONCLUSION

On motion to reopen, the Petitioner has not offered new facts or evidence relevant to our decision to summarily dismiss the Petitioner's appeal. On motion to reconsider, the Petitioner has not established that our prior decision was based on an incorrect application of law or policy at the time we issued the 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.

[1] The Petitioner provides documentation on an average salary of chief executive officers and software developers in Nigeria, the Petitioner's bank statement with [redacted] a tax clearance certificate for [redacted] an industry report about graphic designers, an article about [redacted] and a link to a YouTube video interview of the Petitioner about [redacted]