U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33441325

Date: AUG. 27, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or as an individual of exceptional ability in the sciences, arts, or business. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. See section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i).

The Director of the Texas Service Center denied the petition concluding that the Petitioner did not establish eligibility for the underlying EB-2 immigrant classification or that he is eligible for, and merits as a matter of discretion, a national interest waiver. We dismissed the subsequent appeal agreeing with Director that the Petitioner did not demonstrate his eligibility for the requested national interest waiver. The matter is now before us again on a 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.

As noted above, the Director denied the approval of this petition. The Director determined that the Petitioner does not qualify for the underlying EB-2 classification. We acknowledged the Director's determination and limited our review of the appeal to the Petitioner's eligibility for the national interest waiver. For the national interest waiver, the Director determined that the Petitioner had not met the three prongs of the analytical framework set forth in Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016). We dismissed the appeal affirming the Director's determination that the Petitioner did not meet *Dhansar's* first prong. We reserved our opinion on the second and third Dhanasar prongs and on the Petitioner's eligibility for the underlying EB-2 immigrant classification. See INS v. Bagamasbad, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make "purely advisory findings" and decisions unnecessary to the ultimate decision). We incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). The scope of any 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. See Matter of Coelho, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

The Petitioner submits a brief claiming we should reopen the petition because the Director did not give due regard to all the evidence provided with the petition and with his request for evidence response which demonstrates he qualifies for the underlying EB-2 classification and for the national interest waiver. The Petitioner further asserts that our appeal decision was "deficient" because it did "not evaluate all the arguments presented by the Petitioner in the appeal." However, he does not identify what arguments were not evaluated. Moreover, he does not introduce any new evidence, or a new fact supported by documentary evidence to establish proper cause to reopen our appeal decision. Accordingly, we will dismiss the motion to reopen.

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 Petitioner generally argues that the Director's decision denying the petition was "contrary to law or policy, and unsupported by the evidence of record." He further claims that the Director violated the Fifth Amendment of the U.S. Constitution by not "properly" analyzing evidence submitted with the petition and with his request for evidence response. As noted, however, our review is limited to reviewing the most recent decision. See 8 C.F.R. § 103.5(a)(1)((ii). Here, the Petitioner's arguments relate to the Director's decision instead of the most recent decision, our appeal decision.

The Petitioner makes general assertions that our appeal decision did "not evaluate all the arguments presented" and the evidence was "not properly analyze[d]." But the Petitioner does not articulate what evidence was not properly analyzed, or specifically indicate how we incorrectly applied law or policy in our appeal decision. The Petitioner also does not articulate how the Director violated his Fifth Amendment rights. The Petitioner focuses on the Director's decision and does not explain how our appeal decision was based on an incorrect application of law or policy based on the evidence in the record. The Petitioner may disagree with our decision, but he has not established that we incorrectly applied any law or policy or that our decision was incorrect based on evidence in the record at the time of the decision, as required by 8 C.F.R. § 103.5(a)(3). Accordingly, we conclude that the motion does not meet all the requirements of a motion to reconsider and must therefore be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

The Petitioner has not established that our dismissal of the appeal was based on an incorrect application of law or policy warranting reconsideration of our decision; or that a new fact, supported by evidence, shows proper cause to reopen our appeal decision. Therefore, we affirm our previous determination that the Petitioner has not established eligibility under the first prong of the Dhanasar analytical framework and is thus not eligible for and does not merit a national interest waiver. We will continue

to reserve the issues of the Petitioner's eligibility for the underlying EB-2 immigrant classification and whether he meets the second and third Dhanasar prongs. See INS v. Bagamasbad, 429 U.S. at 25-26.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.