U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33566289

Date: AUG. 29, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur in commercial management, 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 attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Acting Director of the Texas Service Center denied the petition, concluding the record did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the Petitioner's appeal on October 18, 2023 and dismissed her subsequent combined motions to reopen and reconsider on April 15, 2024. The matter is now before us on second 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, the combined motions currently before us will be dismissed and the petition will remain denied.

In our previous decision, we dismissed the combined motions as untimely. On motion, the Petitioner asserts that they were not untimely and submits a delivery notification from the shipping company establishing the date of receipt. Based upon this evidence, we agree that the motions were timely. Nonetheless, for the reasons discussed below, the prior combined motions we dismissed on April 15, 2024 will remain dismissed, albeit on a different basis.

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). Because the Petitioner submitted no new facts or documentary evidence in support of the motion to reopen, it must be dismissed.

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 alleged that the Director "did not give full consideration to the evidence" and did "not properly analyze[]" it, which "violat[ed] the Fifth Amendment of the Constitution." But beyond the Petitioner's vague assertions, she does not discuss how. Further, 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. As noted, our review is limited to reviewing our most recent decision, which in this case is our dismissal of the appeal on October 18, 2023, not the Director's denial.

The Petitioner's statements related to the appeal are similarly limited to general assertions that we did "not evaluate all the arguments presented" and the evidence was "not properly analyze[d]." But she did not sufficiently articulate what evidence was not properly analyzed, nor has she specifically indicated how we incorrectly applied law or policy in our prior decision. The Petitioner may disagree with our decision, but she 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.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.