U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35235140

Date: DEC. 02, 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 a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts or business, 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 record did not establish the Petitioner's eligibility for the requested national interest waiver. We dismissed a subsequent appeal as well as a motion to reconsider. The matter is now before us again on 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.

In our appellate decision, we determined that the Petitioner was not eligible for the underlying EB-2 immigrant classification, nor did he meet the first prong of the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016)[1]. Specifically, we acknowledged the Petitioner's contentions and documentation submitted on appeal regarding his proposed endeavor of continuing his career in the United States as a skydiving instructor, and his claims that his work would impact the health of individuals in the U.S. and address a shortage in his field, but we explained that he did not establish his endeavor would result in broader implications at a level commensurate with national importance, or otherwise result in substantial economic effects.

[1] Because the issue of the Petitioner's ineligibility for the requested immigrant classification was not previously addressed in the Director's decision, we did not dismiss the appeal on this basis alone.

And in our decision dismissing the Petitioner's subsequent motion to reconsider, we acknowledged the Petitioner's resubmission of his appeal brief, but explained that it did not address the conclusions in our prior decision dismissing his appeal. Accordingly, we dismissed the Petitioner's first motion to reconsider because he did not establish that we erred as a matter of law or policy, nor did he establish our prior decision was incorrect based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3).

On motion, the Petitioner again submits the same brief initially submitted on appeal with only a passing acknowledgement of our dismissal of his motion to reconsider. The Petitioner does not identify any error in our decision dismissing the previous motion to reconsider. The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). The Petitioner's contentions in his current motion again reargue facts and issues we have already considered in our previous decisions. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision").

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.