U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34797336

Date: DEC. 02, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a real estate entrepreneur, 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 Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that he qualifies for the underlying EB-2 classification or that a waiver of the required job offer, and this of the labor certification, would be in the national interest.[1] We dismissed the Petitioner's subsequent appeal, concluding that the Petitioner had not established eligibility for EB-2 classification as a member of the professions with an advanced degree. Specifically, we dismissed the appeal because we agreed with the Director that the Petitioner had not provided sufficiently detailed employment letters to demonstrate that he had five years of progressive experience in the specialty. The matter is now before us on the Petitioner's 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.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). *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, the July 2024 dismissal of the Petitioner's appeal. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

Concerning the motion to reopen, the Petitioner does not provide any new facts or submit documentary evidence. The Petitioner submits a brief in which he contends that he has already submitted sufficient evidence to show his eligibility for EB-2 classification. Although the Petitioner has submitted a brief,

[1] An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

he does not provide any new facts regarding his eligibility for EB-2 classification. Instead, the Petitioner provides a listing of already provided evidence with no analysis or argument concerning how this listing constitutes new facts or additional evidence. Accordingly, the Petitioner has not provided a basis for granting his motion to reopen.

Next, we address the Petitioner's motion to reconsider. The Petitioner argues that his motion to reconsider is "predicated on USCIS's clear misunderstanding of the critical elements surrounding the Petitioner's proposed endeavor as an Entrepreneur in the Real Estate field." Regarding EB-2 classification, the Petitioner states that "[d]espite USCIS stating in their denial decision that the appellant's evidence does not meet the requirements for holding an advanced degree, the appellant submitted sufficient evidence to meet this requirement." The Petitioner then lists evidence that he previously submitted without addressing the basis of our decision dismissing his appeal. Because the Petitioner has not shown how we erred as a matter of law or policy, his motion does not meet the requirements of a motion to reconsider under 8 C.F.R. § 103.5(a)(3). *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (confirming that a person cannot satisfy the requirements of a motion to reconsider by generally alleging error in the prior decision, rather the filing party "must specify the factual and legal issues" that were decided in error).

In his brief, the Petitioner also makes arguments regarding his eligibility for a national interest waiver. However, in our decision dismissing his appeal, we reserved on the issue of whether the Petitioner qualified for a national interest waiver as the waiver cannot be granted without an underlying determination that the Petitioner qualifies for EB-2 classification. As the Petitioner has not shown he qualifies for EB2 classification, we reserved and do not need to address the Petitioner's arguments regarding whether he qualifies for a national interest waiver.

As the Petitioner has not submitted additional evidence or provided new facts in support of the motion to reopen, the Petitioner's motion will be dismissed. 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 reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.