U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35465872

Date: DEC. 03, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an 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 Petitioner's Form I-140, Immigrant Petition for Alien Workers, concluding that the record did not establish that the Petitioner was eligible for and merited a national interest waiver as a matter of discretion. We summarily dismissed an appeal after concluding the Petitioner did not identify any erroneous conclusion of law or statement of fact in the Director's decision.[1] We also dismissed a subsequent motion to reconsider. The matter is now before us on a second 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 his second motion to reconsider, the Petitioner submits, in essence, the same brief and evidence that he provided with his first motion, which only raises issues related to the Director's decision. He does not, however, contest the correctness of our decision to dismiss his first motion to reconsider, which is the latest decision in these proceedings. As the Petitioner does not assert that our decision to dismiss his motion was based on an incorrect application of law or policy, or that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision, we will dismiss the motion. 8 C.F.R. § 103.5(a)(4).

[1] The Petitioner submitted an appeal in May 2023 (first appeal) that we summarily dismissed. We note that the Petitioner filed a separate appeal (second appeal) approximately one week after filing the first appeal for which we issued a separate decision on the merits. On his first motion to reconsider, the Petitioner identified the receipt number for the first appeal as the basis for his motion, and we therefore addressed only that decision.

ORDER: The motion to reconsider is dismissed.