U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40510847

Date: DEC. 3, 2025

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 alien of exceptional ability, 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).

Service Center Operations (SCOPS) denied the petition, concluding that although the Petitioner possessed an advanced degree, she did not establish a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed a subsequent appeal. Specifically, we withdrew SCOPS' favorable determination relating to the Petitioner's possession of an advanced degree and concluded that the Petitioner did not satisfy the first prong of *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) and reserved the remaining two prongs. The matter is now before us 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 motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 has the potential to change the outcome).

Although the Petitioner indicated that she was filing both a motion to reopen and a motion to reconsider, the motion does not contain new facts, supported by documentary evidence. The motion contains only a brief without any new claims and corroborated with documentation.[1] Because the Petitioner's motion to reopen does not meet the regulatory requirements, 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

[1] Although the Petitioner's brief indicates "Attachments 1-4," the record contains no attachments submitted on motion.

at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

Regarding the advanced degree issue, we withdrew SCOPS' favorable determination because the Petitioner's associated transcript for her bachelor of arts degree in economics from the [redacted] in Russia reflected that she enrolled in the program in less than four years. Therefore, the Petitioner did not demonstrate that she completed four years to obtain her degree, citing to *Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). On motion, the Petitioner argues that "Shah neither construed 8 C.F.R. § 204.5(k)(2) nor announced a per se four-year rule" and referenced the previously submitted academic evaluation from The Trustforte Corporation (TTC) who opined that the Petitioner's bachelor degree is equivalent to a U.S. four-year bachelor degree.

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner's "Academic Transcript to the Diploma" indicates that the "[s]tandard term of full-study 4 years." However, the transcript reflects that the Petitioner enrolled at [redacted] in less than four years. Although the TTC academic evaluation claimed that "she attained the foreign equivalent of a four-year Bachelor of Arts Degree in Economics from an accredited US college or university" based on "complet[ing] the general studies and specialized studies which lead [sic] to qualification for a bachelor's degree at the university" and "complet[ing] . . . the required classes and examinations," the academic evaluation did not address how the Petitioner completed a four-year program in less than that time. Moreover, while the transcript lists 54 subjects amounting to 7,850 total hours, including 2,625 classroom hours, the evaluation did not address the significance of the subject and hour figures in meeting a four-year program. Furthermore, the transcript indicates that "[t]he educational programme is mastered according to the shortened programme." Again, the evaluation did not mention the shortened program and explain whether such a modified program qualifies as a foreign equivalent baccalaureate degree.

Due to these unresolved deficiencies, the Petitioner did not establish that she provided a credible, reliable academic evaluation. Accordingly, the academic evaluation does not provide probative evidence demonstrating that she possesses a foreign equivalent baccalaureate degree. In order to have education and experience equating to an advanced degree under section 203(b)(2) of the Act, the Petitioner must have a single degree that is the "foreign equivalent degree" to a U.S. baccalaureate degree (plus five years of progressive experience in the specialty). *See* 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B). A United States baccalaureate degree is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. at 245. There is no provision in the statute or the regulations that would allow a petitioner to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree (plus five years of progressive experience in the specialty).

Regarding the national interest waiver, the Petitioner's motion challenges SCOPS' decision without specifically addressing our appellate decision and explaining how we erred as a matter of law or policy. 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 her current motion merely reargue facts and issues we have already considered in our previous decision. *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"). We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

NOTICE: Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.