U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 34927647

Date: DEC. 9, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a bakery and pastry chef, seeks employment-based second preference (EB-2) immigrant classification as an individual 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).

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not establish that the Petitioner qualified for the underlying visa classification, nor that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Director dismissed subsequent motions from the Petitioner. We dismissed the Petitioner's appeal. The matter is now before us on 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 combined motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

The Petitioner, a bakery and pastry chef, seeks to establish her eligibility for the underlying EB-2 immigrant classification as an individual of exceptional ability. In our previous decision, we concurred with the Director that the Petitioner satisfied only two of the six categories to demonstrate exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii). The Director found the Petitioner established she possesses an academic degree relating to the area of claimed exceptional ability and ten years of full-time experience in the occupation. However, the Director concluded, and we agreed on appeal, the Petitioner did not meet any of the additional criterion for classification as an individual of exceptional ability.

On motion, the Petitioner submits a brief, and copies of evidence previously submitted on appeal. We interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceedings, which includes within the original petition. As the evidence submitted on motion was previously submitted in these proceedings, they do not constitute "new facts," and the Petitioner's motion does not meet the requirements of a motion to reopen.

The Petitioner's brief on motion reiterates claims based on the previously submitted evidence and continues to assert the Petitioner satisfies the requirements for classification as an individual of exceptional ability. However, the Petitioner does not acknowledge the specific findings and reasoning included in our prior decision. Specifically, the Petitioner does not address our findings that she does not meet at least three of the sixth regulatory criteria to demonstrate exceptional ability, or our reservation of the issues with respect to whether she merits a national interest waiver as a matter of discretion. In our appeal decision, we determined the Petitioner had not demonstrated her: 1) profession or occupation requires the certificates she attained or that membership in the Association of Cake Designers and Sugar Artists (ACDSA) constitutes a license, 2) salary or other renumeration demonstrated exceptional ability, as the evidence of earnings were for work as an administrator rather than the claimed area of exceptional ability, 3) membership with the ACDSA constitutes membership in a professional organization, 4) letters of recommendation are sufficient to demonstrate recognition for achievement and significant contributions to the industry or field by the requisite entities as they do not include documentation to establish the authors' credentials and do not address the Petitioner's achievements and significant contributions to the industry or field, or 5) comparable evidence criterion was met as she did not explain how the standard criteria do not readily apply to her occupation as a baker and pastry chef. *See* 8 C.F.R. §§ 204.5(k)(3)(ii), (iii). Overall, the Petitioner has not asserted why our decision was incorrect based on the evidence of record or how our prior decision was based on an incorrect application of law or policy. As the Petitioner has not addressed why our prior dismissal of the appeal was incorrect or submitted new facts on motion, she has not met the requirements for a motion to reopen or a motion to reconsider.

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.