U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35451548

Date: DEC. 11, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a special education teacher, 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 Texas Service Center denied the petition, concluding that although the Petitioner qualified for EB-2 classification as an advanced degree professional, she did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the Petitioner's appeal and subsequent combined motions to reopen and reconsider. The matter is now before us again 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 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).

In our prior decision, incorporated here by reference, we determined that the Petitioner had not overcome our prior decision dismissing her appeal, in which we concluded that the Petitioner did not meet the first prong of the analytical framework in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), to adjudicate national interest waiver petitions. We concluded the Petitioner did not establish the national importance of her proposed endeavor. *See id.* at 889 (providing in relevant part that, to establish eligibility for a national interest waiver, the petitioner must establish that their specific proposed endeavor has national importance). Our decision dismissing her prior combined motions concluded that her submission did not meet the requirements of a motion to reopen, and further that

the Petitioner had not established that our previous decision dismissing her appeal was based on an incorrect application of law or policy at the time we issued our decision. In her previous combined motions, the Petitioner contended that we focused primarily on the teaching aspect of her proposed endeavor and failed to consider other aspects; that her national endeavor has national importance because it has intrinsic societal benefits; and that we misapplied the preponderance of the evidence standard because we did not fully consider the record and explain why the evidence was insufficient.

With her second combined motions, the Petitioner provides a statement and new evidence. In her statement, she seeks to clarify the scope of her proposed endeavor by providing additional and new evidence. Because the Petitioner was put on notice and given a reasonable opportunity to provide evidence establishing the national importance of her proposed endeavor by the Director's request for evidence (RFE), we will not consider it for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial"). Although the regulations for a motion to reopen require new facts to be supported by documentary evidence, the Petitioner does not seek to explain why the new evidence was unavailable at the time of the Director's RFE, and instead appears to submit the evidence in response to our prior decision. Any new facts submitted on motion must establish eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm'r 1971).

The Petitioner again asserts that our evaluation of a letter from a professor at the [redacted] was insufficient; however, our prior decision stated that this evidence was reviewed and considered. When USCIS provides a reasoned consideration of the petition, and has made adequate findings, it will not be required to specifically address each claim a petitioner makes, nor is it necessary for it to address every piece of evidence a petitioner presents. *See Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022); *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir. 1992); *aff'd Morales v. INS*, 208 F.3d 323, 328 (1st Cir. 2000); *see also Pakasi v. Holder*, 577 F.3d 44, 48 (1st Cir. 2009); and *Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009).

Finally, the Petitioner again states that she believes that she has met the burden of proof, and that she qualifies for the requested classification, and submits "additional expert opinion letters and statistical data that substantiate the national importance" of her work. However, as noted above, we will not consider this new evidence with her motion to reopen. The Petitioner requests that "the AAO reconsider its decision in light of the clarifications and additional evidence provided" in her response, but she does not contend that our prior decision was based on an incorrect application of law or policy, as required. 8 C.F.R. § 103.5(a)(3).

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). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. Further, the Petitioner's contentions in their current motion merely 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"). 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.