U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35731054

Date: DEC. 19, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks employment-based second preference immigrant classification, as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition. We summarily dismissed a subsequent appeal because the Petitioner did not specifically identify an erroneous conclusion of law or statement of fact in the Director's decision. We next dismissed the Petitioner's first combined motion to reopen and motion to reconsider because the Petitioner did not timely file it. We then dismissed the Petitioner's second combined motion to reopen and motion to reconsider because the Petitioner did not establish either new facts demonstrating eligibility, or that we incorrectly applied law or policy to the facts at the time we dismissed the prior combined motion, respectively. The matter is now before us on a third combined motion to reopen and 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 combined motion to reopen and motion to reconsider.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 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 most recent, prior combined motion. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the latest prior combined motion. Rather, the Petitioner addresses the Director's underlying decision, disregarding our basis for summarily dismissing her appeal and for dismissing her prior motions. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our

prior decision. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

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.

Again, 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). However, in the most recent motion to reconsider, the Petitioner does not acknowledge the latest prior decision in the proceeding. Instead, as noted above, the Petitioner addresses the Director's basis for denying the underlying Form I-140, Immigrant Petition for Alien Workers. 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.