U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41108523

Date: FEB. 06, 2026

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, 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 the Petitioner did not establish that he merits a discretionary waiver of the EB-2 classification's job offer requirement. We dismissed a subsequent appeal. The matter is now before us on motion to reconsider for the fifth time.

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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner contests the correctness of our prior decision. We dismissed that motion, the Petitioner's fourth in this matter, because it did not satisfy the requirements for a motion to reconsider under 8 C.F.R. § 103.5(a)(3).

In support of the motion, the Petitioner asserts that our dismissal of his previous motion to reconsider was in error because we applied the evidentiary standard for a motion to reopen. We disagree. Our decision dismissed the motion specifically because it did not demonstrate that our previous decision was based on an incorrect application of law or policy and correctly cited to the regulation at 8 C.F.R. § 103.5(a)(3) which spells out that requirement for a motion to reconsider. In the following discussion we referred to the instructions for Form I-290B, which state regarding motions in general that "you must file any brief and/or additional evidence together with Form I-290B." We then

compared the provision relating to appeals at 8 C.F.R. § 103.3(a)(2)(vii), which allows for additional time to submit a brief, with the regulations at 8 C.F.R. § 103.5 pertaining to motions which include no such provision. At no point did our decision conflate or confuse the requirements for a motion to reconsider with those of a motion to reopen.

The Petitioner's preceding motion to reconsider did not include a brief or a basis statement, and thus did not identify any error in our application of law or policy in our decision on his third motion. While the Petitioner now asserts that his previous motion "properly challenged errors of law in the adjudication of his EB-2 NIW petition," no such challenges are reflected in the record. The motion was therefore properly dismissed for not meeting the requirements for a motion to reconsider.

The Petitioner goes on to assert that SCOPS' appeal decision and our previous motion decisions misapplied the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). But as noted above, the scope of a motion is limited to the prior decision. 8 C.F.R. § 103.5(a)(1)(i), (ii). Our most recent decision did not consider the merits of the Petitioner's eligibility for a national interest waiver, so those issues are beyond the scope of the current motion and will not be considered.

The Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

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 his current motion include arguments of 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 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.