U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41165048

Date: FEB. 9, 2026

Motion on Administrative Appeals Office Decision

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

The Petitioner, a private airline, seeks employment-based second preference (EB-2) immigrant classification for the Beneficiary 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).

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish that a waiver of the classification's job offer requirement, and thus of the labor certification, would be in the national interest. We dismissed a subsequent appeal and withdrew SCOPS' decision that the Petitioner had established the Beneficiary's eligibility for the requested EB-2 classification as an individual of exceptional ability.[1] 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 motions.

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

[1] To qualify for the underlying EB-2 visa classification, a petitioner must establish that the Beneficiary is an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

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 states, "USCIS found that '[a] review of the record establishes that the beneficiary qualifies under at least three (3) of the six (6) criteria required for this classification. Therefore, this criterion has been met.'" SCOPS made this statement in the denial of the petition, concluding that the Beneficiary had met the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) (an official academic record which shows that the alien has a degree, diploma, certificate or similar award relating to the area of exceptional ability); (B) (letters from current of former employers showing at least 10 years of full-time experience); (C) (a license to practice the profession), and; (F) (recognition for achievements to the industry or field by peers, governmental entities, or professional or business organizations).

In our appellate decision, however, we withdrew SCOPS' decision and concluded that the Beneficiary did not meet the initial evidence requirement for the requested EB-2 classification by meeting at least three of the criteria under 8 C.F.R. § 204.5(k)(3)(ii). Specifically, we withdrew SCOPS' determinations regarding 8 C.F.R. § 204.5(k)(3)(ii)(A) and (F). We also concluded that, although SCOPS did not conduct an analysis to make a final merits determination, the record as a whole does not establish the Beneficiary's eligibility as an alien of exceptional ability.

The Petitioner does not assert new facts that establish the Beneficiary's eligibility for the requested EB-2 classification. Nor does the Petitioner assert that our previous decision that the Beneficiary was not eligible for EB-2 classification as an alien of exceptional ability was based on an incorrect application of law or policy. The Petitioner has not addressed the evidentiary issues we discussed in our appellate decision regarding the Beneficiary's academic records or his recognition for achievements in aviation. On motion, the Petitioner has not met the burden of proof to establish that the Beneficiary is an alien of exceptional ability, and therefore he is not eligible for EB-2 classification. As this issue is dispositive of the motion, we will not address the Petitioner's arguments that he is eligible for a national interest waiver. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). Based on the record, the motion to reopen and the motion to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(4).

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.