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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41107908

Date: FEB. 10, 2026

Motion on Administrative Appeals Office Decision

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

The Petitioner, a financial analyst, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or 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 eligibility for the underlying EB-2 classification as an individual of exceptional ability, or that a waiver of the required job offer, and thus of a labor certification, would be in the national interest. We dismissed a subsequent appeal and five combined motions to reopen and reconsider. The matter is now before us on a sixth combined motion 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). 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. 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 support of his current motion to reopen, the Petitioner submits a brief and copies of previously submitted documents, including [redacted] general manager job description, bylaws for his memberships at the Brazilian Association of Financial and Capital Market Entities and the Union of Employees in Bank Establishments, and support letters. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. We have already considered and analyzed the Petitioner's evidence under the preponderance of evidence standard and confirmed that the Petitioner has not established that he meets at least three of the six criteria under 8 C.F.R. § 204.5(k)(3)(ii). Because the Petitioner has not established new facts that would warrant

reopening of the proceeding, we have no basis to reopen our prior decision. Therefore, the motion will be dismissed.

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). 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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion to reconsider, the Petitioner asserts that we misapplied 8 C.F.R. § 103.5(a)(3), failed to apply the preponderance of the evidence standard, ignored material evidence, and issued a decision that is inconsistent with both the record and SCOPS' decision.

Except where a different standard is specified by law, a petitioner must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Chawathe*, 25 I&N Dec. at 375-76. Under the preponderance of the evidence standard, the evidence must demonstrate that a petitioner's claim is "probably true." *Id.* at 376. Here, the Petitioner merely reargues facts and issues we have already considered in our prior decisions but does not identify any specific error of law or fact in our previous decision. The Petitioner therefore has not established that our prior decision was based on an incorrect application of law or policy at the time we issued our decision. We reiterate that the purpose of a motion to reconsider is to demonstrate a misapplication of law or policy in the most recent prior decision, not to re-adjudicate the petition anew. *See, e.g.*, *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit, in essence, the same brief and seek reconsideration by generally alleging error in the prior decision). Because the Petitioner has not established 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, the motion to reconsider must be dismissed.

Although the Petitioner has submitted a brief in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, 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. Accordingly, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4). Similarly, the Petitioner's appeal remains dismissed, and his underlying petition remains denied.

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.