U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35755004

Date: FEB. 13, 2025

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Exceptional Ability)

The Petitioner, a human resources specialist, 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).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that the Petitioner qualified as a member of the professions holding an advanced degree. We dismissed a subsequent appeal and three following motions. The matter is now before us on a fourth 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 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). The scope of a motion review 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.

In her last motion, the Petitioner argued that we applied a stricter standard of proof than permissible when evaluating the evidence of record. She claimed that the "perceived discrepancies" regarding the Petitioner's work history are not "indicative of falsification or deception" and were generally "minor." She also contended that she had established the unavailability of primary evidence for her position at [redacted] Finally, the Petitioner asserted that the that the additional affidavits were sufficient secondary evidence and established her role at [redacted] in accordance with the requirements. We disagreed with the Petitioner's arguments.

In the current motion, the Petitioner asserts that under 8 C.F.R. § 103.2(b)(2) the affidavits she submitted should be accepted as primary evidence was unavailable and our dismissal of this evidence

imposed a higher standard of proof than the requisite preponderance.[1] She further avers that the affidavits submitted should be sufficient to "resolve discrepancies" and that "requiring independent, third-party documentation for every issue seemed to exceed the preponderance standard." The Petitioner also claims that "perceived discrepancies in her employment history should be viewed as minor and immaterial."

As outlined above, the assertion that the affidavits in question should be accepted as appropriate secondary evidence, that they resolve the discrepancies in the record, and that the discrepancies are themselves minor in nature were arguments made by the Petitioner in her last motion. We observe no error in our denial of these arguments in the last motion. 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 decision. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006).

Finally, we disagree with the Petitioner's remaining argument that we applied an impermissibly high standard of proof in our prior decision, specifically when we "insist[ed] on resolving every discrepancy with independent, objective evidence." A petitioner must "resolve any inconsistencies in the record by *independent objective evidence*, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." *Matter of Ho*, 19 I&N Dec. 582, 582 (BIA 1988) (emphasis added).

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. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.

[1] 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. *Matter of 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.