U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36346321

Date: FEB. 18, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a medical assistant, 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 the Petitioner had not established eligibility for the underlying EB-2 visa classification, or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the Petitioner's appeal and her subsequent combined motions to reopen and to reconsider. The matter is now before us again on a second motion to reconsider. 8 C.F.R. § 103.5.

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.

I. LAW

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 "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Thus, our analysis for this motion is limited to determining whether our dismissal of the prior motion to reopen and reconsider was based on an incorrect application of law or policy. 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).

II. ANALYSIS

The Petitioner proposes to continue working as a medical assistant for a medical facility in Florida. The Director denied the approval of this petition, concluding the Petitioner's proposed work as a

medical assistant did not qualify her as a member of the professions with an advanced degree, or that a waiver of the job offer requirement is in the national interest. In dismissing the appeal, we deemed the EB-2 classification issue waived because the Petitioner's brief did not address her qualification for the underlying EB-2 classification; instead, it solely focused on her eligibility for a national interest waiver. In addition, we explained that although the Petitioner not qualifying for the EB-2 classification was dispositive of her appeal, we nevertheless, reviewed the record, finding that she did not demonstrate the national importance of her proposed endeavor under *Dhanasar's* first prong.[1] We dismissed the Petitioner's subsequent combined motion as it did meet the applicable requirements. 8 C.F.R. § 103.5(a)(4). We determined that the Petitioner did not submit new facts, or assert a legal error, to overcome our appeal decision deeming the EB-2 classification issue waived and concluding she did not demonstrate the national importance of her proposed endeavor. We incorporate our prior decisions by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion.

The purpose of a motion to reconsider is to show incorrect application of law or policy in the most recent prior decision. See 8 C.F.R. § 103.5(a)(3). Here, the Petitioner's current motion to reconsider does not meet this standard.

In this motion, the Petitioner repeats arguments made in her previous motion brief about her being a professional with an advanced degree and her eligibility for the national interest waiver. As discussed above, the appeal was dismissed because the Petitioner did not contest the Director's adverse determination that she did not qualify for the underlying EB-2 classification as a member of the professions with an advanced degree. With this issue waived, we explained her ineligibility for the EB-2 classification was the dispositive issue of the appeal. She, therefore, could not overcome the denial of the petition, even if she established that the Director erred with respect to her eligibility for the national interest waiver.

Because the Petitioner waived and abandoned her claim to the issue of her eligibility for the EB-2 classification in the appeal, she waived her right to address this issue in subsequent proceedings, specifically in the prior combined motion and this motion. Every basis of the adverse decision must be addressed in the appeal, otherwise we consider it to be abandoned within this and any subsequent proceeding based on this petition. See Matter of Garcia, 28 I&N Dec. 693, 693 (BIA 2023) (finding arguments that do not meaningfully challenge any aspect of the underlying decision are deemed waived on appeal). The Petitioner's eligibility for the EB-2 classification as a member of the professions with an advanced degree was a basis for denying the petition, and she did not address, and therefore abandoned her claims on this matter. Having deemed she waived the issue of her EB-2 classification, the Petitioner cannot later claim for the first time in her subsequent combined motion and in this motion that the Director incorrectly applied the law. This means we will not factor those abandoned claims into this or any future motion decision based on this particular petition. She is, however, eligible to reintroduce these claims in any future petition filing.

[1] We reserved our review of the Petitioner's eligibility under *Dhanasar's* second and third prongs. See INS v. Bagamasbad, 429 U.S. 24, 25-26 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

Moreover, the previous combined motion and this motion do not identify any legal error in our deeming her claim for EB-2 classification waived because it was not raised on appeal. The burden remains with the Petitioner to establish eligibility and specifically identify any erroneous conclusion of law for the immediately prior decision. See 8 C.F.R. § 103.2(b).

In this motion, the Petitioner also claims our prior motion erred in our application of the law when considering the national importance of her proposed endeavor under *Dhansanar's* first prong. We have already considered and analyzed the Petitioner's evidence in the petition under the preponderance of the evidence standard and found it insufficient to demonstrate eligibility for the requested benefit. Our immediately prior motion decision appropriately pointed out that the Petitioner's prior arguments did not assert an incorrect application of law or USCIS policy, or present new facts supported by evidence, warranting the reopening or reconsideration of the petition. See Matter of Coelho, 20 I&N Dec. at 473.

III. CONCLUSION

The Petitioner has not established that the dismissal of the previous motion to reopen and reconsider was based on an incorrect application of law or policy at the time we issued our decision, warranting reconsideration of our decision. See 8 C.F.R. § 103.5(a)(3). Therefore, the motion will be dismissed. 8 C.F.R. §103.5(a)(4).

ORDER: The motion to reconsider is dismissed.