U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37237879

Date: FEB. 20, 2025

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).

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We summarily dismissed the Petitioner's appeal, as well as two subsequently filed motions to reconsider.[1] The matter is now before us again 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). By regulation, our review on motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). We must dismiss any motion that does not satisfy the relevant motion requirements. 8 C.F.R. § 103.5(a)(4). Upon review, we will dismiss the Petitioner's motions.

I. MOTION TO REOPEN

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We interpret "new facts" to mean those that are material to the issues raised on motion and that have not been previously submitted in the proceeding, which includes within the original petition and any subsequent motion or appeal. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute the submission of "new facts."

On motion, the Petitioner submits a brief, a copy of his business plan, articles, bank statements, a letter from his accountant, and other documents related to his companies to further support his claimed eligibility for a national interest waiver. While some of these documents are themselves new to the

[1] The Petitioner submitted an appeal in May 2023 (first appeal) that we summarily dismissed. The Petitioner filed a separate appeal (second appeal) approximately one week after filing the first appeal for which we issued a separate decision on the merits. The Petitioner's two previously filed motions to reconsider were predicated on the first appeal.

record, the Petitioner has not presented new facts establishing that we erred in dismissing his prior motion.

As noted above, 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, which in this case is our dismissal of his motion to reconsider. Because the Petitioner has not established new facts relevant to our most recent decision that would warrant reopening of the proceeding, his motion to reopen will be dismissed.

II. MOTION TO RECONSIDER

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 purpose of a motion to reconsider is to show error in the most recent prior decision, not to adjudicate the petition anew. *See 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). A motion to reconsider also cannot be used to raise a legal argument that could have been raised earlier in the proceedings. *Id.*

On motion, the Petitioner does not contend that our last decision dismissing his motion to reconsider was based on an incorrect application or law or policy or that our decision was incorrect based on the record at the time of that decision. Instead, he continues to assert his eligibility for a national interest waiver and alleges errors in the Director's denial of his underlying petition. However, this is not the decision before us today. Again, a motion's scope is limited to "the prior decision" and "the latest decision in the proceeding," which, in this case, is his last motion to reconsider. 8 C.F.R. § 103.5(a)(1)(i), (ii). As the Petitioner has not argued, much less established, that our prior decision was based on an incorrect application of law or policy at the time we issued our decision, the motion to reconsider must be dismissed.

III. CONCLUSION

The Petitioner has not shown proper cause for reopening or reconsidering our prior decision. Because the instant motions do not meet the applicable regulatory requirements, we must dismiss them. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.