U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36219404

Date: FEB. 21, 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 he is eligible for EB-2 classification or a national interest waiver. We dismissed the Petitioner's appeal[1] and a subsequent motion to reconsider.[2] Next, we dismissed the Petitioner's combined motion to reopen and reconsider because the combined motion neither asserted new facts nor demonstrated or asserted our misapplication of law or policy in our prior motion decision. Notably, we highlighted that the record contained insufficient evidence of his eligibility for EB-2 classification. The matter returns to us on another 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). 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).

On motion to reopen, the Petitioner submits a statement in which he asserts that our prior decision failed to consider the impact of his proposed endeavor on the U.S. economy and in his industry, as well as the national interest that is served by his endeavor's promotion of energy efficiency and

[1] In our appellate decision, we determined the Petitioner did not establish eligibility for EB-2 classification as an advanced degree professional or an individual of exceptional ability, and we reserved our opinion on the merits of his requested national interest waiver.

[2] In the subsequent motion to reconsider, we determined the Petitioner did not identify any misapplication of law or policy in our prior EB-2 determination. Since his ineligibility for EB-2 classification remained dispositive, we again reserved the issue of the Petitioner's eligibility for a national interest waiver.

sustainable practices. As an example, the Petitioner provides information about his contract to install a walk-in freezer for a bread distribution company, and letters of support from his customers explaining that they value his services. The Petitioner also addresses his business's growth, the hiring of additional employees and subcontractors, and the expansion of his fleet of trucks. The Petitioner also points out his membership in the American Society of Heating, Refrigerating, and Air-Conditioning Engineers.[3] The Petitioner asserts that these facts establish his eligibility.

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, on motion to reopen, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the combined motion. Here, the Petitioner has not provided new facts to establish his eligibility for EB-2 classification. As such, we must dismiss the motion to reopen. *See* 8 C.F.R. § 103.5(a)(4) ("A motion that does not meet applicable requirements shall be dismissed.").

Similarly, the Petitioner's contentions on motion to reconsider relate to his eligibility for a national interest waiver based on the growth of his company. However, our prior decision reserved that issue, and we dismissed his motion because he did not address his eligibility for EB-2 classification. *See Matter of O-S-G-*, 24 I&N Dec. 56, 60 (BIA 2006) ("[A] motion to reconsider must include specific allegations as to how the [agency] erred as a matter of fact or law in its [latest] decision."). The Petitioner's motion to reconsider does not address this dismissal ground. As such, we must dismiss the motion to reconsider. *See* 8 C.F.R. § 103.5(a)(4).

Therefore, the petition remains denied for insufficient evidence to establish the Petitioner's eligibility for EB-2 classification, and we continue to reserve our opinion on the merits of his national interest waiver. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant did not otherwise meet their burden of proof).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[3] The Petitioner has previously submitted this evidence, which we considered in our decision dismissing his appeal. In that decision, we explained that this membership post-dates the filing date of the petition and therefore would not be considered in our EB-2 analysis because eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1).