U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37016122

Date: FEB. 25, 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 or an individual of exceptional ability in the sciences, arts or business, as well as a national interest waiver of the job offer requirement attached to this classification. See section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Workers (national interest waiver), concluding that the Petitioner had not established eligibility for the EB-2 immigrant classification or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Director then dismissed a combined motion to reopen and to reconsider and we dismissed the subsequent appeal. The matter is now before us on combined motions to reopen and 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 combined 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). 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.

In our decision dismissing the Petitioner's appeal, we concluded that the Petitioner did not identify an erroneous conclusion of law or statement of fact in the Director's decision denying the combined motions. Rather, the Petitioner broadly asserted error, did not address the Director's specific findings, and inaccurately described the Director's determinations.

In the instant combined motions, the Petitioner asserts we erred in our appeal decision by only evaluating the Director's motion decision, not the Director's original decision. However, the matter

before us then was not an appeal of the denial of the national interest waiver but an appeal of the combined motions. The principal question was not whether the Petitioner qualified for the classification sought, but whether the Director correctly determined that the Petitioner did not meet the requirements to reopen and to reconsider the denial of the national interest waiver. Further, the Petitioner also contends that our prior decision did not address all the points she raised on appeal. However, the Petitioner does not identify the points she raised that we did not address in our decision dismissing the appeal.

Rather, the Petitioner re-asserts her eligibility for the underlying EB-2 classification as an individual of exceptional ability and for a national interest waiver of the job offer requirement and includes new documents, which were previously not submitted to the Director, including letters of employment, her tourist guide license, her company earnings statement, and additional support letters. However, on appeal, we did not consider the Petitioner's newly issued employment letters for the first time, and will similarly not consider the additional new evidence submitted with the combined motions, because the Petitioner was put on notice of the required evidence and given a reasonable opportunity by the Director to provide it before the petition was denied. The Petitioner has not established that we erred as a matter of law or policy in not considering this evidence. See 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); Matter of Soriano, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").

The Petitioner's arguments center on how the new documents establish her eligibility and do not raise issue with our analysis of the evidence present at the time of the decision. Consequently, she has not established that our prior decision was based on an incorrect application of law or policy and that our decision was incorrect based on the evidence in the record of proceedings at the time of the decision.

Further, even if we did accept the new evidence, the documents do not establish her eligibility. For example, the Petitioner's new evidence does not address the issues raised by the Director with respect to the national importance of her proposed endeavor, including that she materially changed her proposed endeavor. Nor does the evidence demonstrate how her initial proposed endeavor of providing tourism consulting would sufficiently extend beyond an organization she worked for and its clients to impact the industry or field more broadly or would have significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established her eligibility. 8 C.F.R. § 103.5(a)(2). 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. 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 reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.