U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36168384

Date: JAN. 14, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a construction manager and civil engineer, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition and we dismissed a subsequent appeal. We dismissed a subsequent combined motion to reopen and motion to reconsider because the Petitioner untimely submitted it. We then dismissed a second combined motion to reopen and motion to reconsider because the Petitioner did not establish we erred by dismissing the prior combined motion to reopen and motion to reconsider as untimely. The matter is now before us on a third combined motion to reopen and 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 combined motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). 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).

We incorporate by reference our analysis in the prior combined motion to reopen and motion to reconsider decision. By way of summation, we dismissed the Petitioner's appeal in October 2023, and we served the Petitioner our decision by mail. Service of U.S. Citizenship and Immigration Services' (USCIS) decisions by mail is complete upon mailing. 8 C.F.R. § 103.8(b). In January 2024, USCIS received the Petitioner's Form I-290B, Notice of Appeal or Motion, at the proper filing location, indicating that it was a combined motion to reopen and motion to reconsider our decision on the appeal. We dismissed the combined motion because USCIS received it more than 33 days after we sent the underlying decision on the appeal, citing 8 C.F.R. §§ 103.5(a)(1), 103.8(b). We then

dismissed the Petitioner's second combined motion to reopen and motion to reconsider because it did not establish we erred by dismissing the prior combined motion to reopen and motion to reconsider as untimely.

Now, on motion to reopen, the Petitioner neither addresses the basis for which we dismissed the prior combined motion nor supports the instant motion with new documentary evidence. Rather, the third combined motion purports to "include[] additional evidence and detailed analysis substantiating my eligibility and clarif[y] points in the initial submission." Because the current motion to reopen neither states new facts material to the basis for which we dismissed the second combined motion—specifically, whether we erred by concluding the first combined motion was untimely—nor is supported with new documentary evidence, it does not satisfy the requirements of a motion to reopen and it will be dismissed. 8 C.F.R. §§ 103.5(a)(2), (4).

Next, 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 our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

As noted above, the Petitioner does not address the basis for which we dismissed the prior combined motion and, thus, does not establish that our prior decision was based on an incorrect application of law or policy and that it was incorrect based on evidence in the record at the time of the decision. Because 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 on the immediately preceding combined motion, the current motion to reconsider will be dismissed. 8 C.F.R. §§ 103.5(a)(3)-(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.