U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35565640

Date: JAN. 23, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a consultant and/or advisor in the field of electronic engineering (cybersecurity), 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 that the Petitioner did not establish that he merited a waiver of the job offer and labor certification requirements for EB-2 classification. The Director further dismissed a subsequent motion to reopen and reconsider their decision. We summarily dismissed a subsequent appeal of the motion decision. The matter is now before us on combined motions to reopen and reconsider.

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). 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). 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.

On motion to reopen, the Petitioner submits a statement arguing that our appeal decision was incorrect. The Petitioner has not presented new facts relevant to our prior decision or provided additional documentary evidence to satisfy the requirements of a motion to reopen.

On motion to reconsider, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner relies on 8 C.F.R. § 103.3(a)(1)(V) and *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). The Petitioner argues that we erred by summarily dismissing his appeal. He states that his brief on appeal argued his eligibility for NIW classification and his appeal should not have

been summarily dismissed. However, the Petitioner's appeal letter merely restated arguments he made to the Director and did not identify a clear error in the Director's motion decision or provide additional insight into his work history and professional accomplishments to establish eligibility under the second prong of *Dhanasar*.

The Petitioner states that he is well positioned to advance the field of cybersecurity because he is currently employed by a "major global company entrusted with significant cybersecurity responsibilities" and that he has the "expertise and industry positioning necessary to drive advancements" in the cybersecurity field. These are the same arguments he made to the Director on motion and to us on appeal and are unsupported by the record. The Petitioner is employed by S-K-[1], a paper-based packaging manufacturer. The letter of support from his employer states that the Petitioner is responsible for a broad range of activities related to the company's IT infrastructure, including maintaining Wi-Fi connectivity and applying their cybersecurity principals. The Petitioner has not established that working for a paper manufacturing company on their internal IT infrastructure makes him well positioned to advance the overall field of cybersecurity.

On combined motions, the Petitioner generally states that we did not properly consider the evidence provided to the Director in our decision to summarily dismiss the appeal. The Petitioner does not reference any specific piece of evidence we failed to consider or otherwise demonstrate that the previously submitted evidence was sufficient to establish eligibility. The Petitioner, again, does not specifically address how the Director erred in their motion decision or state the relevant facts that were not fully considered. Merely reasserting eligibility is not sufficient to meet the requirements of an appeal and any appeal that does not specifically identify an erroneous conclusion of law or statement of fact shall be summarily dismissed. 8 C.F.R. § 103.3(a)(1)(V). To the extent that the Petitioner argues that we did not review the evidence in the record below, we are not required to identify and discuss every piece of evidence provided in support of an appeal. *Osuchukwu v. INS*, 744 F.2d 1136, 1142-43 (5th Cir. 1984) ("[The Board of Immigration Appeals] has no duty to write an exegesis on every contention").

The Petitioner further argues, as he did on appeal, that the Director's decisions have been inconsistent regarding his eligibility for NIW classification. He states that in a June 2022 decision the Director denied on the first prong of *Dhanasar* but determined he was eligible under the second prong. The June 2022 decision of the Director is not at issue on motion. The Petitioner is required to establish eligibility for the requested visa classification with each new filing. *See* 8 C.F.R. § 103.2(b)(1), *see also Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

Even if we had fully considered the Petitioner's appeal he would not have been able to establish eligibility for a national interest waiver. To establish eligibility for a national interest waiver, a petitioner must demonstrate eligibility under all three prongs of the *Dhanasar* framework. On appeal, the Petitioner solely addressed his eligibility for a national interest waiver under the first and second prongs of the framework. The Petitioner did not address or contest the Director's specific findings regarding the third prong. Similarly, the current combined motions do not address the third prong of the *Dhanasar* framework. Because the Petitioner has not addressed the Director's determination that he does not qualify for a national interest waiver under the third prong, in particular the impracticality

[1] We use initials to protect the privacy of individuals and organizations.

of the labor certification process, we deem the issue waived and will additionally dismiss the motion to reconsider based on this dispositive issue. *See Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)); *see also, Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992).

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 or that he is eligible for the underlying benefit. 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.