U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29526567

Date: JAN. 25, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an industrial engineering professor and researcher, 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 her proposed endeavor is of national importance, and therefore that she did not merit a national interest waiver as a matter of discretion. We dismissed a subsequent appeal. The matter is now before us 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). Upon review, we will dismiss both of the motions.

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).

The Petitioner's proposed endeavor is to establish an industrial engineering consultancy in the United States. She submitted evidence showing that she earned a Ph.D. in industrial engineering and has worked as a professor, researcher, and coordinator of post-graduate studies in Venezuela. In our decision dismissing her appeal, we agreed with the Director's conclusion that the proposed endeavor is of substantial merit in the area of business, but also that the Petitioner did not establish that her endeavor is of national importance. Specifically, we noted that she did not support her claims of the economic and societal benefits of her proposed endeavor with documentary evidence, and that while the recommendation letters she provided lauded her work as a teacher and researcher, they did not demonstrate the potential prospective impact of her ownership of a consulting business.

On motion, the Petitioner submits a brief and a new version of her business plan, dated July 18, 2023. This is a revised version of the business plan she submitted in response to the Director's request for evidence. Some of the sections added to the business plan discuss the Petitioner's experience, additional information about the industry she plans to be engaged in, and expanded sections about her proposed company's pricing structure and the hiring of employees. The Petitioner asserts that these additional sections establish eligibility, as they show that her endeavor has the potential to generate revenue and generate employment, thus having an economic impact on the local economy.

We initially note that the addition of these new sections to the previously submitted business plan does not constitute new facts as required for a motion to reopen. The new paragraphs at section 2.1 of the plan, for example, state that she has an advanced degree in a STEM field and related experience, facts which were established by evidence already in the record. Other sections added to this previously existing document include descriptions of the proposed company's pricing structure and human resources costs. However, as it relates to a motion to reopen, new bases for eligibility are distinct from the type of "new facts" the regulation references for this type of filing. A post-appellate motion to reopen is not the proper forum to advance new claims of eligibility that the Petitioner did not introduce at any prior stage in the proceeding. New eligibility claims advanced for the first time to an administrative appellate body, even at the motion to reopen stage, are not properly before us, especially if the filing party was represented by counsel in the lower proceedings. *Matter of M-F-O-*, 28 I&N Dec. 408, 410 n.4 (BIA 2021) (refusing to consider an appellant's humanitarian claims that were presented for the first time to the appellate body).

In addition, even if we were to consider the Petitioner's edits to her proposed company's business plan as new facts, which we do not, eligibility for an immigrant visa petition must be established at the time of filing. 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts."). This new version of the business plan cannot establish the Petitioner's eligibility for a national interest waiver, or more specifically the national importance of her proposed endeavor, at the time her petition was filed. As the Petitioner has not submitted new facts with her motion to reopen, it does not meet the requirements at 8 C.F.R. § 103.5(a)(2) and will therefore be dismissed.

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.

Here, the Petitioner does not identify any errors in our application of law or policy in the appellate decision, nor does she assert that our decision was incorrect based on the record at the time. Indeed, after listing the requirements for a motion to reconsider, the Petitioner's brief focuses entirely on the revised business plan discussed above. As such, the requirements of a motion to reopen have not been met, and the motion will be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.