U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41022491

Date: JAN. 30, 2026

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Professional)

The Petitioner, an importer, sought to employ the Beneficiary as its business manager. The company requested his classification under the employment-based third preference (EB-3) immigrant visa category as a "professional." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). Employers may sponsor aliens for U.S. permanent residence in this classification to work in jobs that require at least a bachelor's degree. *Id*.

Service Center Operations (SCOPS) revoked the approval of the petition, concluding that the record did not establish that the Beneficiary has the two years of work experience required for the offered job. We dismissed the Beneficiary's subsequent appeal, concluding that he did not overcome the grounds for revocation.[1] *See In Re: 25609696* (AAO Oct. 12, 2023). We also dismissed the Beneficiary's five subsequent motions. The matter is again before us on the sixth combined motions to reopen and reconsider.

As a movant in revocation proceedings, the Beneficiary bears the burden to demonstrate eligibility by a preponderance of the evidence. *Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988). Upon review, we will dismiss the motions.

I. LAW

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). 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).

[1] SCOPS determined that the Beneficiary qualifies for treatment as an "affected party" in these revocation proceedings because he established eligibility to "port" to a new job under section 204(j) of the Act, 8 U.S.C. § 1154(j), and properly requested permission to port. *See Matter of V-S-G- Inc.*, Adopted Decision 2017-06, at *14 (AAO Nov. 11, 2017).

Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii).

II. ANALYSIS

In our two previous decisions we dismissed the Beneficiary's fourth and fifth combined motions, in which he sought the reopening or reconsideration of our decision dated January 10, 2025. In that decision, we dismissed his third combined motion to reopen and reconsider as untimely filed because it was not filed within 33 days of the mailing of our prior decision. *See* 8 C.F.R. §§ 103.5(a)(1)(i), 103.8(b)(1).

We considered whether the record demonstrated that the delay in filing the third motion "was reasonable and was beyond the control of the applicant or petitioner," and concluded that it was not. 8 C.F.R. § 103.5(a)(1)(i). We acknowledged and addressed the Beneficiary's claim that his previous representative had inadvertently made an error on the Form I-290B which led to its rejection. We also addressed the Beneficiary's assertion that SCOPS did not clearly identify its reasons for rejecting the third motion. However, we concluded that the Beneficiary did not establish the delay in filing the third motion was beyond his control.

In a brief submitted in support of the current motion, the Beneficiary again reargues issues we considered in our immediate prior decision, as well as our previous decisions, and submits the same supporting evidence. A motion is not an opportunity to restate previously considered and rejected arguments, just as it is not an opportunity to reargue facts and issues already addressed on appeal. *See, e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision").

With the current motion, the Beneficiary does not contest our specific reasons for finding his arguments unpersuasive or challenge the legal authorities cited in our decision. He therefore has not established with the current motion that our last decision was based on an incorrection application of law or policy. Accordingly, the motion to reconsider will be dismissed.

With his sixth motion to reopen, the Beneficiary submits the same evidence and states the same facts as his previous motion. Although the Beneficiary states that he has obtained "independent medical documentation" since the prior decision, the medical documentation submitted is dated March 24, 2025, and was submitted with the prior combined motions. As the Beneficiary has not established new facts that would warrant reopening of the proceeding, the motion to reopen will be dismissed.

We also previously addressed the Beneficiary's claim that due process concerns compel us to grant nunc pro tunc relief and concluded that it was not persuasive. As previously noted, the record does not support the Beneficiary's allegations of "procedural injustice" in our adjudication of his five prior motions to reopen or reconsider. Accordingly, his request for nunc pro tun relief will not be granted.

III. CONCLUSION

The Beneficiary has not submitted new or additional evidence in support of the motion to reopen. On motion to reconsider, the Beneficiary has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motions 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.

NOTICE: Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.