U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38098880

Date: JULY 1, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as well as a national interest waiver (NIW) 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).

SCOPS denied the Form I-140, Immigrant Petition for Alien Workers (petition), and they dismissed a subsequent motion to reopen and reconsider. The matter in the motion decision is now before us on appeal under 8 C.F.R. § 103.3. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

SCOPS issued a request for evidence (RFE) noting the Petitioner did not establish he qualified for the underlying immigrant classification. The RFE also informed the Petitioner that he did not meet at least one of the three prongs outlined in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). After the Petitioner responded to the RFE, SCOPS denied the petition only concluding the record was inadequate to demonstrate he qualified for the NIW requirement as he had not shown he was well positioned to advance the proposed endeavor. We note that determination was dispositive of the petition filing and SCOPS was not required to make a separate analysis for the EB-2 classification.

Then in the Petitioner's motions, he presented new evidence to bolster his claims that he was well positioned to advance the proposed endeavor. We note that motion filing did not advance what new facts the Petitioner was presenting to SCOPS, which is the primary requirement for a motion to reopen. *See* 8 C.F.R. § 103.5(a)(2). Whether he submitted additional documentation is not the main focus for a motion to reopen. SCOPS subsequently dismissed the motions because the Petitioner failed to meet the primary requirements for each motion type (e.g., no new facts supported by evidence for the motion to reopen and no misapplication of law or policy supported by a relevant legal authority showing the decision was incorrect).

We begin any appeal ensuring the filing party identifies an erroneous conclusion of law or statement of fact within the most recent decision in a previous proceeding. *See* 8 C.F.R. § 103.3(a)(1)(v),

103.3(a)(2)(i)–(iv). This applies to appeals of adverse conclusions on petitions and applications, or on adverse motion decisions. Under that framework, we look to whether SCOPS met their responsibilities for that particular type of decision (e.g., petition denials or revocations versus motion dismissals). We emphasize that the Petitioner has not appealed the May 1, 2023 petition denial itself, but rather SCOPS' subsequent dismissal of his combined motion to reopen and reconsider dated January 13, 2025. In the January 2025 decision, SCOPS did not affirm the prior denial. Instead, they concluded that the motions did not meet the applicable requirements. Therefore, the question before us on appeal is whether SCOPS erred in dismissing the combined motions.

1. For a motion to reopen at 8 C.F.R. § 103.5(a)(2) we consider whether the Petitioner stated new facts and supported those facts with documentary evidence; and
2. For a motion to reconsider at 8 C.F.R. § 103.5(a)(3) we consider whether the Petitioner established SCOPS' prior decision was based on an incorrect application of law or policy, and whether the decision was incorrect based on the evidence in the record of proceedings at the time of the decision.

As a result, we consider whether the Petitioner has demonstrated that SCOPS improperly dismissed the motion to reopen and reconsider. Within SCOPS' motion to reopen analysis, they stated the "evidence submitted with the motion to reopen does not establish that the requirements for filing a motion to reopen have been met." The regulation at 8 C.F.R. § 103.5(a)(2) provides: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." The Petitioner's motion to reopen did not state any new facts and instead listed new and revised evidence they were offering with the motion (e.g., an amended business plan). As we noted above, SCOPS dismissed the motion to reopen because the Petitioner failed to state new facts for them to consider. It is this fatal flaw that sunk the motion to reopen's chances, even before SCOPS offered any analysis.

Within the Petitioner's appeal, he discusses a separate immigrant petition he filed subsequent to the petition before us, and the outcome of that filing. Irrespective of the outcome of a separate petition that is not part of the record before us, the issue we will address is the propriety of the underlying decision; the SCOPS decision on his motion to reopen and reconsider. And his appeal does not grapple with SCOPS' determination that his motion to reopen didn't meet the basic requirements to state new facts for them to consider. For that reason, the Petitioner has not oriented the appeal brief to address the primary shortcoming SCOPS noted in the motion to reopen dismissal.

The appeal before us does not address the determination that his motion filing did not meet the requirements for that type of motion. As a result, he has waived that issue and we will not address it further. Any argument a filing party does not raise on appeal is deemed waived. *Matter of C-A-R-R*, 29 I&N Dec. 13, 18 (BIA 2025).

In summary, the Petitioner has not overcome the most recent decision from SCOPS and we will dismiss the appeal for those reasons.

ORDER: The appeal is dismissed.