U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31415514

Date: JUL. 16, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a financial manager, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that he qualifies for the national interest waiver. The Director dismissed a subsequently filed motion to reopen and reconsider. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

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). 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.

The Petitioner seeks to provide financial consulting services as the Founder and Lead Financial Advisor of [redacted]. The Director denied the petition, concluding that the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, but he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner filed a combined motion to reopen and motion to reconsider. The Director dismissed the motions, determining that the Petitioner's submissions did not meet the motion requirements. The matter is now before us on appeal.

Where, as here, an appeal is filed in response to a director's unfavorable action on a motion, the scope of the appeal is limited to the director's decision on that motion. The regulatory provision at 8 C.F.R. § 103.3(a)(2)(i) states: "The affected party must submit the complete appeal including any supporting brief as indicated in the applicable form instructions *within 30 days after service of the decision*." (Emphasis added). Thus, if the Petitioner wished to appeal the Director's decision to deny the petition, it should have elected to file that appeal within 30 days of the Director's denial decision. Here, though, the

Petitioner elected to file a combined motion instead, thus limiting the scope of the appeal to the merits of the Director's decision to dismiss the motions. Our review and analysis in this matter, therefore, will focus on determining whether the Director's decision to dismiss the motions was correct.

On appeal, the Petitioner doesn't address the merits of the November 3, 2023, decision dismissing the combined motion to reopen and motion to reconsider. Rather, the appeal focuses on the August 29, 2023, denial of the petition, which is not the subject of the instant appeal and is not now before us. The only issue correctly before us on appeal is whether the immediate prior decision – that is, the Director's decision to dismiss the motion to reopen and motion to reconsider – was correctly decided. However, the Petitioner did not address that issue. Upon review, we concur with the Director's decision dismissing the motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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). 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.

The Director dismissed the Petitioner's motion to reopen, determining that the Petitioner did not submit new facts that were supported by affidavits and/or documentary evidence demonstrating eligibility at the time of filing of the underlying petition.

On motion, the Petitioner submitted the following evidence:

1. Expert Opinion Letter by Dr. [redacted] DBA, CPA from [redacted]
2. Expert Opinion Letter by [redacted] Vice President Finance at [redacted] and
3. Expert Opinion Letter by [redacted] President [redacted] Bookkeeping & CFO Services.

After review of the brief submitted on motion and the accompanying documentation, we concur with the Director's determination. Although the Petitioner submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. Specifically, we note that the evidence submitted on motion reveals no fact that could be considered *new* under 8 C.F.R. 103.5(a)(2).

The Director dismissed the motion to reconsider on the basis that it did not provide reasons for consideration that were supported by citations to appropriate statutes, regulations, or precedent decisions, and it did not show that the decision was incorrect based on the evidence of record at the time of the decision. Upon review of the Petitioner's submissions on motion, we agree that the motion did not satisfy the requirements of a motion to reconsider. On motion, the Petitioner asserted that the Director incorrectly relied on *Matter of Caron International* to dismiss evidence. USCIS may, in its discretion, use as advisory opinion statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination

regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). The Director reviewed the evidence on the record, including initial documentation submitted with the petition and subsequent documentation submitted in response to a request for evidence (RFE), and determined the record does not demonstrate a record of success sufficient to establish that the Petitioner is well positioned to advance his endeavor.

On appeal, we note that the Petitioner submits a brief that generally reiterates his qualifications and contends that he has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Petitioner makes no assertion of error with regard to the Director's November 3, 2023, decision, which is the subject of this appeal. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The appeal is dismissed.