U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40155981

Date: JUL. 17, 2026

Motion on Administrative Appeals Office Decision

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

The Petitioner, a geologist, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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).

U.S. Citizenship and Immigration Services (USCIS) denied the petition, concluding that the Petitioner did not establish that he met the initial evidentiary requirements for EB-2 classification as an individual of exceptional ability, and that a waiver of the required job offer, and thus of a labor certification, would be in the national interest. We dismissed a subsequent appeal, concluding that the Petitioner did not establish his eligibility for the EB-2 classification as an alien of exceptional ability, and reserving the issue of his request for a national interest waiver. The Petitioner then filed two motions to reopen which we determined did not meet the motion requirements, and a third which was dismissed because it was not timely filed. We also dismissed subsequent combined motions to reopen and reconsider, declining to excuse the late filing of the previous motion and concluding that the Petitioner did not meet the requirements for a motion to reconsider as he did not explain how our decision to dismiss the third motion incorrectly applied law or USCIS policy and was incorrect based on the record at the time of the decision. The matter is now before us on motion for the fifth time.[1]

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.

Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20

[1] In Part 2 of Form I-290B, the Petitioner checked box 2.a indicating that he was filing a motion to reopen. Because his brief includes assertions for both a motion to reopen and a motion to reconsider, we will consider his intention and address both in our decision.

I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

On motion, the Petitioner submits evidence pertaining to his first place win in an academic Olympiad during eighth grade, a reference letter, and a webpage presenting statistics about a software application he developed, which he asserts pertains to criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F). We first note that the sole issue considered in our previous motion concerned the Petitioner's request that we accept his previously filed motion as a matter of discretion, a request we declined. Therefore the Petitioner's assertions and additional evidence regarding this evidentiary criterion are outside the scope of the current motion. Secondly, the letter and certificates were previously submitted and thus do not meet the requirements of a motion to reopen and will not be further considered.[2]

While the webpage appears to be an updated version of evidence that was previously submitted, it pertains to facts which occurred years after the Petitioner filed his petition in February 2021. As we stated in our decision to dismiss the Petitioner's second motion, a petition may not be approved at a future date after the petitioner becomes eligible based on a new set of facts. Therefore any new facts submitted on motion must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1); *see also Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm'r 1971). This new evidence will not be considered.

Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. We will not re-adjudicate the petition anew.

Motion to Reconsider

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). 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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner does not contest the correctness of our most recent decision,[3] but refers to aspects of our previous decisions which are beyond the scope of the current motion. The Petitioner's contentions in his current motion merely reargue facts and issues we have already considered in our previous decisions. *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"). For example, he asserts that we went beyond the "preponderance of the evidence" standard "for both exceptional ability and NIW prongs," despite the fact that we reserved any analysis of his request for a national interest

[2] We note that a document providing background information about an academic Olympiad does not apparently pertain to the geography award the Petitioner received in eighth grade, since it discusses an Olympiad for high school students in mathematics, physics, chemistry, and biology. As it is not material, it will not be considered.

[3] The Petitioner asserts that we referred to the incorrect "EB-5" classification in our most recent decision, but no such error can be found. Even if this clerical error had appeared in our decision, the Petitioner does not explain the manner in which we incorrectly applied the law or USCIS policy due to this asserted error.

waiver in our appellate decision and have not addressed this issue in any of the Petitioner's subsequent motions. As stated above, we will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

Conclusion

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. 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. 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.

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.