U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31569951

Date: JUL. 19, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a human resources specialist, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional or 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). The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish her eligibility for the EB-2 classification, and she did not demonstrate that a waiver of the required job offer, and thus labor certification, would be in the national interest. We dismissed a subsequent appeal, also concluding that she did not establish her eligibility for the underlying EB-2 classification; and given our resolution of this dispositive threshold issue, we did not reach whether she warrants a national interest waiver as a matter of discretion. This matter is now before us on a combined motion to reopen and reconsider. Upon review, we will dismiss the combined motion.

A motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must show 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 proceeding 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 a motion that meets these requirements and establishes eligibility for the benefit sought. Petitioners bear the burden of establishing their eligibility for the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

In our prior decision dismissing the appeal, we determined that the Petitioner did not establish her eligibility for the underlying EB-2 classification based on exceptional ability as she did not satisfy at least half of the six evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii).[1] Specifically, we ultimately concluded, as did the Director, that the Petitioner's documentation only met the academic record criterion, 8 C.F.R. § 204.5(k)(3)(ii)(A), and did not satisfy the remaining five of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B), (C), (D), (E), (F). We provided a full analysis, and, as this

[1] Although the Petitioner also may seek EB-2 classification as a professional holding an advanced degree, she sought classification before the Director only based on exceptional ability. Further, the Petitioner did not assert on appeal, and the record did not otherwise show, she is an advanced degree professional. This issue therefore was not before us on appeal. *See Matter of Garcia*, 28 I&N Dec. 693 n.1 (BIA 2023) (holding that issues not raised on appeal are waived); *Matter of J-Y-C-*, 24 I&N Dec. 260, 261 n.1 (BIA 2007) (noting that matters not raised previously are waived on appeal).

issue was dispositive of the appeal, did not reach whether she warrants a discretionary national interest waiver under the three-prong framework as set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (holding that agencies are not required to reach issues that are unnecessary to the ultimate decision).

The Petitioner has not demonstrated that reconsideration is warranted. On motion to reconsider, she submits a brief, along with a university degree diploma and related transcripts, which she did not previously submit to the Director or us on appeal. The Petitioner asserts for the first time on motion that she erroneously sought EB-2 classification below based on exceptional ability due to her prior attorney's mistake and now claims that she qualifies for the EB-2 classification as a member of the professions holding an advanced degree. However, we do not consider new evidence or new eligibility claims on a motion to reconsider. 8 C.F.R. § 103.5(a)(3). Other than the above assertions and arguments related to advanced degree, she does not dispute or assert any error in our prior determination on appeal that the evidence then before us did not establish her claimed eligibility for the EB-2 classification solely based on exceptional ability as she clearly indicated at initial filing, following the Director's notice of intent to deny (NOID), and on appeal. Consequently, she has not demonstrated that our last decision was based on an incorrect application of law or policy and that our decision was incorrect based on the evidence before us when we dismissed her appeal. The Petitioner therefore has not met the requirements of a motion to reconsider, and we will dismiss this motion. *Id.*

The Petitioner also has not demonstrated that reopening is warranted. She asserts that initially seeking EB-2 classification only as a person of exceptional ability was "in error" and she qualifies for the classification as a member of the professions holding an advanced degree. She further avers that this "oversight" of initially misclassifying herself based on exceptional ability, rather than as an advanced degree professional, "can be attributed to a mistake made by the previous attorney." But other than this vague assertion as to attorney error, she does not specify the alleged mistake or how it was made. Here, the record clearly reflects that when she filed her petition, and on appeal, she based her EB-2 classification eligibility claim solely on exceptional ability, and she did not assert her eligibility as an advanced degree professional at any point or submit probative evidence of her academic record, such as transcripts and an independent academic evaluation, even after she was specifically notified of the evidentiary shortcomings related to her academic credentials in the Director's NOID. Consequently, the Petitioner's general assertion as to prior attorney error does not overcome the fact that the Petitioner previously waived her (now new) EB-2 classification claim as an advanced degree professional. *Matter of Garcia*, 28 I&N Dec. at 693 n.1; *Matter of J-Y-C-*, 24 I&N Dec. at 261 n.1.

The Petitioner nonetheless avers that a copy of her "bachelor's degree" from Brazil and the underlying school transcripts, which she submits to us for the first time on motion, coupled with her claimed five years of progressive post-degree experience, establish that she is an advanced degree professional for EB-2 classification purposes. 8 C.F.R. § 204.5(k)(2); 8 C.F.R. § 204.5(k)(3)(i)(B). However, because she was specifically put on notice and given a reasonable opportunity to provide this evidence before the Director and had an opportunity to supplement the record on appeal, we are not required to consider it now for the first time on this motion. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal where "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").

Even if we were to consider the new school documents on motion, they do not establish that the Petitioner has a U.S. bachelor's degree or a foreign equivalent degree, as she claims. Although the Brazilian degree contains the word "Bachelor's" ("Bacharela a"), the two underlying school transcripts do not show she completed an education comparable to that of a U.S. bachelor's degree, which generally requires four years of university-level education. *See Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977). The two transcripts together indicate five semesters of course work evidencing only two and a half to three years of university education from 2003 to 2005. The first transcript for the 2003 and 2004 program in "Administration Applied to Tourism" lists "[Blank]" for "DIPLOMA ISSUANCE" and "GRADUATION." The second transcript, which indicates that the same program was for a "bachelor's degree," only lists course records for the first semester of 2005, notes that the Petitioner was a transfer student, and states that her diploma was issued in 2011; whereas the diploma she submits on motion shows it was granted in November 2022, six months *after* she filed her petition.[2] The Electronic Database for Global Education (EDGE), which we consider a reliable source on foreign credential equivalencies, also indicates that a Brazilian "Bachelor's Degree" ("Titulo de Bacharel" or "Title of Bachelor") as listed on her 2022 diploma may represent attainment of a level of education comparable to "3 to 5 years" of university study in the United States.[3] As the transcripts only show three years of education, they do not establish she has a foreign degree equivalent to a U.S. bachelor's degree, as she claims, even if the 2022 diploma was granted before she filed her petition. Therefore, the Petitioner's motion does not overcome the ground on which we dismissed her appeal or otherwise demonstrate reopening is warranted because the new evidence does not establish her alternatively claimed eligibility for the EB-2 classification as an advanced degree professional.

Accordingly, the Petitioner has not established that reopening or reconsideration of our prior decision is warranted. 8 C.F.R. § 103.5(a)(2), (3).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[2] The record does not contain a 2011 diploma, and her resume states that she obtained her "bachelor's degree" in 2006. The record also does not include any evidence that she in fact obtained a university degree in 2006.

[3] *See* https://www.aacrao.org/edge/country/credentials/brazil (last accessed July 19, 2024). EDGE is a web-based resource for the evaluation of foreign educational credentials created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). AACRAO is a professional association of higher education admissions and registration professionals who represent academic institutions located in over 40 countries.