U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 32271596

Date: JULY 19, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur and an automobile repair worker, 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).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not qualify for EB-2 classification as an individual of exceptional ability and did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We summarily dismissed the Petitioner's appeal and dismissed his subsequent combined motions to reopen and reconsider. The matter is now before us on second combined motions to reopen and reconsider.

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.

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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). 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).

In our prior decision, incorporated here by reference, we explained we summarily dismissed the Petitioner's appeal because he did not identify any specific legal or factual error in the Director's decision and did not submit his brief and/or additional evidence to us within 30 days of filing the appeal as he indicated he would do on his Form I-290B Notice of Appeal or Motion. With his prior motions, the Petitioner submitted a mailing label showing he mailed his brief to the filing location for the Form I-290B instead of sending it to our office, as the instructions to the Form I-290B direct.

With his present motions, the Petitioner submits his resume, business plan, and a brief claiming he is eligible for and merits the grant of a waiver of the job offer requirement in the national interest under the analytical framework of *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). The Petitioner does not submit any evidence that his brief on appeal was timely filed with our office. The Petitioner also does not identify any legal error or misapplication of policy in our prior decisions dismissing his appeal and his prior combined motions to reopen and reconsider.

On motion to reopen, the Petitioner has not submitted evidence establishing any error in our prior decision. On motion to reconsider, the Petitioner has not demonstrated 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.