U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32194012

Date: JUL. 29, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a skydiving instructor, seeks employment-based second preference (EB-2) classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed a subsequent appeal. The matter is now before us on a motion to 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 motion.

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.

On motion to reconsider, the Petitioner contests the correctness of the Director's decision. In support of the motion, the Petitioner submits a brief identical to the one he submitted with the appeal. The brief therefore does not address the conclusions from our prior decision—the one that is the subject of his motion—or cite to specific instances where we misapplied law or policy in dismissing the appeal. Rather, since it is identical to the brief submitted on appeal, the Petitioner's brief discusses the Director's decision and reiterates arguments regarding the Petitioner's eligibility for the national interest waiver.

A motion that does not satisfy the applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4). As previously noted, a motion to reconsider must state the reasons for reconsideration; be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application

of law or policy; and establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). Merely submitting a brief is not sufficient to meet the requirements of a motion to reconsider under 8 C.F.R. § 103.5(a)(3). *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision). Rather, the moving party must demonstrate that the immediate prior decision was based on an incorrect application of law or USCIS policy. Here, the Petitioner's motion does not meet these requirements.

Accordingly, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and his underlying petition remains denied.

ORDER: The motion to reconsider is dismissed.