U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32194792

Date: JULY 29, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur and prospective general and operations manager of acai fruit bowl and smoothie franchises, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, 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 qualified for classification as a professional holding an advanced degree, but did not establish 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; determining that while the Petitioner qualified for second-preference classification, the record did not establish eligibility for a national interest waiver. The matter is now before us on 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 motion.

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

The Petitioner indicates on the Form I-290B, Notice of Appeal or Motion, that his submission is both a motion to reopen and a motion to reconsider. The Petitioner also submits a brief that refers to the submission as "the Motion to Reopen and Reconsider." However, the Petitioner does not identify a new fact, nor does he submit documentary evidence of such a fact in support of the motion. Because the submission does not identify a new fact, and it is not supported by documentary evidence of such a fact, it does not satisfy the requirements of a motion to reopen. *See* 8 C.F.R. § 103.5(a)(2). Therefore, the motion to reopen will be dismissed. 8 C.F.R. § 103.5(a)(4).

Next, 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 our prior decision. In support of the motion, the Petitioner asserts, "[t]he Petitioner has presented all the necessary documents along with the filing and RFE response, but those documents were not properly analyzed by the Service, violating the Fourth Amendment of the Constitution of the United States of America as Petitioner provided timely and proper notice to his [sic] RFE response to USCIS." The Petitioner highlights that the Director wrongly determined that the Petitioner submitted a professional plan for a proposed endeavor in management consulting the industrial and engineering field. However, this determination is not in the request for evidence, the Texas Service Center's decision, or our subsequent appeal dismissal. The record establishes that the Petitioner's proposed endeavor was to serve as the general and operations managers of acai fruit bowl and smoothie franchises and the determining correspondence from USCIS reflects the record.

The Petitioner asks for reconsideration of the decision as a whole and does not otherwise specifically identify on motion any other particular item of evidence that was submitted, how such evidence addresses any particular aspect of national importance, and how we may have erred in our analysis of such evidence in our prior decision. *See* 8 C.F.R. § 103.5(a)(1)(ii) (limiting the scope of a motion to the latest decision). In addition, the Petitioner does not explain how our prior decision may have violated his fourth amendment rights. The Petitioner bears the burden to demonstrate eligibility or, in this case, the applicability of the law or policy he asserts we incorrectly applied in the latest decision. 8 C.F.R. § 103.5(a)(3); *see also* 8 C.F.R. § 103.5(a)(1)(ii); *Matter of Chawathe*, 25 I&N Dec. at 375-76. 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).

The Petitioner did not identify any new facts, or submit any additional documentary evidence of such facts, and therefore, the Petitioner has not established eligibility for a motion to reopen. 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.