U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32364024

Date: JULY 31, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a skincare specialist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or an individual of exceptional ability as well as a national interest waiver of the job offer requirement attached to this classification. 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 establish that she is eligible for a discretionary waiver of the job offer requirement. We summarily dismissed a subsequent appeal because the Petitioner did not submit a brief or additional evidence specifying any erroneous conclusion of law or statement of fact in our summary dismissal. We dismissed a subsequent combined motion to reopen and reconsider because it was untimely filed.[1] The matter is now before us on another combined motion 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). 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).

On motion, while the Petitioner submits a statement, it generally reiterates the benefits of her profession, her qualifications, and the claimed national importance of her proposed "aesthetics and beauty clinic" but it does not provide any new evidence or arguments which overcome the Director's

[1] An individual must appeal an unfavorable decision within 33 calendar days of the date it was mailed. 8 C.F.R. §§ 103.3(a)(2)(i) and 103.8(b). On May 19, 2023, USCIS mailed the unfavorable decision to the Petitioner. The Petitioner's Form I-290B was received at the designated filing location on September 1, 2023, which is 105 days after the decision. Accordingly, the Petitioner's appeal was rejected as untimely pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

determination. As noted above, a motion to reopen must state new facts, supported by documentary evidence, that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." Further, the Petitioner does not assert that our previous decisions were based on an incorrect application of law and/or policy. Upon review, we do not find any error or incorrect application of law or policy.

The Petitioner has not established new facts relevant to our appellate decision that would warrant reopening of the proceedings, nor has she shown that we erred as a matter of law or USCIS policy. Consequently, we have no basis for reopening or reconsideration of our decision. Accordingly, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and her underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.