U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32498169

Date: JUL. 31, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a dentist, 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 Nebraska Service Center denied the petition, concluding the record did not establish a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We summarily dismissed a subsequent appeal. The matter is now before us on 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 to reconsider.

A motion to reconsider must establish 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 a motion that both satisfies these requirements and demonstrates 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).

As stated, in our prior decision, incorporated herein by reference, we summarily dismissed the Petitioner's appeal as she had not identified an erroneous conclusion of law or statement of fact in the Director's decision. *See* 8 C.F.R. § 103.3(a)(1)(v) (setting forth basis for summary dismissal of an appeal). We additionally noted the Petitioner submitted for the first time on appeal a letter of intent to invest in the Petitioner's proposed endeavor and the investor's bank statement. We also noted the Petitioner's original business plan indicated she would use her financial resources alone to launch the endeavor. We cited to *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998) and 8 C.F.R. § 103.2(b)(1) in stating material changes may not be made to a petition that has already been filed, as a petitioner must establish eligibility at the time of filing and facts that "come into being only subsequent to the filing of a petition" cannot be considered.

On motion, the Petitioner asserts she has demonstrated she is well positioned to advance her proposed endeavor under the second prong of the framework for adjudicating national interest waiver petitions outlined in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), and she now requests a reassessment of all related evidence submitted before the Director. However, the only decision properly before us on motion is our January 2024 appellate decision, not the Director's June 2023 decision. *See* 8 C.F.R. § 103.5(a)(1)(i), (ii) (requiring that motions pertain to the "prior decision" or "latest decision."). The Petitioner also claims the investor letter submitted on appeal does not constitute a substantial change as she still plans to fully finance the initial phase of her proposed endeavor; the Petitioner contends she submitted the letter only to demonstrate an individual is interested in investing in her endeavor. However, our dismissal of the Petitioner's appeal was not based upon the letter from the Petitioner's potential investor, which we merely acknowledged and noted as reflecting language different from her initial business plan. Rather, we summarily dismissed the appeal because the Petitioner did not submit a brief or evidence relating to the Director's grounds for denial of the petition. Here, the Petitioner does not allege that our summary dismissal decision is incorrect. It is also noted the Petitioner's claim related to this letter is a statement of fact; in making this statement, she does not contend our decision was incorrect based on a misapplication of law or policy, as required for a motion to reconsider. *See* 8 C.F.R. § 103.5(a)(3). Accordingly, in requesting only reassessment of evidence submitted before the Director, the Petitioner has not met the requirements of a motion to reconsider. *See id.*

Consequently, we have no basis for reconsideration of our decision and the motion to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal remains dismissed, and the underlying petition remains denied.

ORDER: The motion to reconsider is dismissed.