U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31585532

Date: JUL. 31, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a fitness trainer and entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional or 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that a discretionary waiver of the required job offer, and thus labor certification, would be in the national interest. We summarily dismissed a subsequent appeal because he did not identify specifically any factual or legal error in the unfavorable decision for us to conduct a meaningful appellate review. 8 C.F.R. § 103.3(a)(1)(v). The Petitioner now files a combined motion to reopen and reconsider. Upon review, we will dismiss the combined motion.

A motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must show 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 proceeding 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 meets these requirements and establishes eligibility for the benefit sought.

In our prior decision summarily dismissing the appeal, we summarized the Director's evidence-based determination that the Petitioner did not satisfy any of the requisite three prongs as set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), and thus he did not establish that he warrants a discretionary national interest waiver. While the Petitioner's submitted an appeal brief, we noted that he provided no new evidence on appeal, and his appeal assertions generally renewed and repeated his claims presented to the Director without mentioning any specific findings below or identifying any erroneous conclusion of law or statement of fact in the Director's denial. 8 C.F.R. § 103.3(a)(1)(v) (setting forth basis for summary dismissal of an appeal).

The Petitioner has not demonstrated that reconsideration is warranted. On motion, he submits a brief nearly identical to the appeal brief he previously submitted to us, reasserts that his documentary evidence submitted below establishes his eligibility for a discretionary national interest waiver, and generally asks us "to reconsider [his] case." Other than these assertions and reiterating verbatim the same appeal brief, he does not dispute or assert any legal or policy error in our previous decision

summarily dismissing his appeal. The Petitioner's Form I-290B, Notice of Appeal or Motion, also does not contain any statement of error in our prior decision. Consequently, he has not demonstrated that our last decision was based on an incorrect application of law or policy and that it was incorrect based on the evidence then before us when we summarily dismissed his appeal. 8 C.F.R. § 103.5(a)(3). The requirements of a motion to reconsider thus have not been met, and we will dismiss this motion.

As for the motion to reopen, the Petitioner does not submit any new evidence, and his notice of motion does not otherwise include a statement or explanation of the basis for this motion by the Petitioner. Further, the Petitioner's motion brief, which is virtually identical to his prior appeal brief, does not state any new facts to be proved that would overcome the ground on which we summarily dismissed his appeal or otherwise establish his claimed eligibility for the discretionary national interest waiver. 8 C.F.R. § 103.5(a)(2). Consequently, the Petitioner has not demonstrated that reopening is warranted.

Accordingly, as the Petitioner has not established that reopening or reconsideration of our prior decision is warranted, the following orders will be entered.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.