U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28841881

Date: JUN. 5, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Other Worker)

The Petitioner, a pharmaceutical clinical research business, seeks to permanently employ the Beneficiary as a nursing assistant. It requests the Beneficiary's classification under the third-preference, immigrant visa category as an "other worker" requiring less than two years of training or experience. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 C.F.R. § 1153(b)(3)(A)(iii).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary met the minimum training and experience requirements stated on the ETA Form 9089, Application for Permanent Employment Certification (ETA 9089). We dismissed a subsequent appeal. The matter is now before us on a combined motion to reopen and motion to reconsider.

On motion, the Petitioner requests that we reconsider the adverse decision and reopen Petitioner's Form I-140 because "the requirement leaves room for interpretation." The Petitioner does not assert any errors of law or policy in our appellate decision. Nor does the Petitioner present new facts or provide supporting documentary evidence.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, "new facts" are facts 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."

Here, the Petitioner presents no new facts supported by documentary evidence. Therefore, we will dismiss the motion to reopen.

A motion to reconsider must establish that our 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).

On motion, the Petitioner asserts that "the evidence clearly points to [the Beneficiary] meeting the requirements (literally OR equivalently)."

In a motion to reconsider we do not consider new objections to the earlier denial. The Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding. Here, the Petitioner alleges the same errors in the Director's decision as it did in its appellate arguments. We addressed these arguments in our appellate decision. However, the Petitioner does not identify any specific error of law or fact in our prior appeal decision. Nor does the Petitioner assert that our prior appeal decision did not follow the regulations and policy guidance.

The Petitioner has not established proper grounds for reconsideration. The Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; the motion must demonstrate how we erred as a matter of law or policy. *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).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361. For the reasons discussed above, the Petitioner has not shown proper cause for reopening the proceedings or reconsideration of our prior decision. Therefore, the Petitioner has not established eligibility for the benefit sought.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.