U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31418115

Date: JUNE 11, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification, as well as a national interest waiver (NIW) 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the record did not establish that the Petitioner merited a discretionary waiver of the job offer requirement in the national interest. We summarily dismissed the appeal because the Petitioner did not identify an error in fact or law she attributed to the Director. Now, she files a motion to reopen and reconsider our most recent decision. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motions.

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).

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.

The most recent decision, the decision the Petitioner contests with these motions, was our summary dismissal of her appeal. We summarily dismissed the appeal in part because she alleged a due process violation, but we informed the Petitioner that we do not consider such claims. She further claimed the Director failed to apply the proper standard of proof when adjudicating the petition. However, she did not explain or identify an instance when the Director made such an error. Finally, we noted the Petitioner's brief discussed previously submitted evidence by offering the same or similar arguments

as those she presented to the Director in response to her notice of intent to deny, but again without contesting the Director's findings. We informed her that reasserting previous claims without specifying an error is not a proper basis for an appeal.

Within the current motion brief, the Petitioner does not address our summary dismissal or our conclusion that she failed to identify an error in law or fact within the appeal brief. Instead, her counsel alleges that USCIS did not give full consideration to some evidence. She then claims within the motion brief that because USCIS acknowledged the existence of her submitted evidence, that she has presented sufficient evidence to demonstrate eligibility, but for the fact that all of her materials were not specifically discussed in the Director's decision:

> In fact, the documents listed by the Service in the denial letter are proof that the Petitioner has presented all the necessary documents along with the filing and RFE [request for evidence] response, but those documents were not properly analyzed by the service violating the Fifth Amendment of the Constitution of the United States of America as [the] Petitioner provided timely and proper notice to his [sic] RFE response to USCIS.

Here, Petitioner's counsel does not identify any specific documents or other pieces of evidence that the Director—or we—failed to consider, nor does counsel explain how our discussion or consideration of those materials would have changed the outcome of the case. This falls short of meeting the Petitioner's burden of proof.

The matters the Petitioner must first overcome within this motion are limited to the issues discussed within our most recent decision; the appeal's summary dismissal. General support that a motion must first overcome the most recent decision lies within the regulation at 8 C.F.R. § 103.5(a)(1)–(3) where it repeatedly discusses the underlying or latest decision, it limits the time one has to file a motion after the most recent decision, and it references jurisdiction resting with the entity who made the latest decision. This demonstrates that any motion must first address and overcome the most recent adverse decision before the filing party's arguments may move on to any issue that arose in a previous petition, appeal, or motion filing.

Because the Petitioner's eligibility for the national interest waiver was not an element in our most recent decision, we will not consider that aspect in these motions. We note the fact that we simply mentioned her eligibility for a national interest waiver by observing her own conclusory statements, is not sufficient grounds for that issue to factor into this motion. For these reasons, we determine the Petitioner has not overcome our reasoning within her appeal's summary dismissal.

The Petitioner has not demonstrated that we should either reopen the proceedings or reconsider our decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.