U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42894654

Date: JUN. 12, 2026

Motion on Administrative Appeals Office Decision

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

The Petitioner, a private airline, seeks employment-based second preference (EB-2) immigrant classification for the Beneficiary as 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).

Service Center Operations (SCOPS) denied the petition, concluding the Petitioner did not establish that a waiver of the classification's job offer requirement, and thus of the labor certification, would be in the national interest. We dismissed a subsequent appeal and withdrew SCOPS' decision that the Petitioner had established the Beneficiary's eligibility for the requested EB-2 classification as an individual of exceptional ability.[1] The Petitioner later filed combined motions to reopen and reconsider that we dismissed. The matter is now before us again on combined motions 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 motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (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).

[1] To qualify for the underlying EB-2 visa classification, a petitioner must establish that the Beneficiary is an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

In our prior decision, we dismissed the motion to reopen because the Petitioner did not assert new facts to establish the Beneficiary's eligibility for the requested EB-2 classification. Further, we dismissed the motion to reconsider concluding that the Petitioner did not sufficiently articulate how our prior decision was based on an incorrect application of law or policy.

Upon review, we will dismiss the motions. The Petitioner again asserts the Beneficiary's eligibility as an individual of exceptional ability and points to the already submitted evidence, indicating that "the evidence submitted may have not been clear" and "a review of the record is warranted." However, we reviewed the submitted evidence on appeal and again following the filing of the prior combined motions. As the Petitioner has provided no new facts and documentary evidence, the motion to reopen must be dismissed.

Further, the scope of this motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). The Petitioner's contentions in support of the motions merely reargue facts and issues we have already considered in our previous decisions, and the Petitioner does not specifically articulate how our prior dismissal of the motions was in error. *See, e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision"). For this reason, the motion to reconsider must be dismissed.

Lastly, in order to grant a motion, the Petitioner is required to not only meet the regulatory requirements for a motion, but they must also demonstrate eligibility for the requested benefit. However, in support of the motions, the Petitioner only addresses the issue of exceptional ability and does not discuss how he qualifies for a national interest waiver. For this additional reason, we cannot grant either motion. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

NOTICE: Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.