U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38962426

Date: JUN. 17, 2025

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 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).

SCOPS denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the appeal and three motions to reconsider. The matter is now before us on motion to reconsider for a fourth time. Upon review, we will dismiss the motion.

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. 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).

In our prior decision, we concluded the Petitioner's motion repeated previous assertions and contentions and had not met the requirements of a motion to reconsider. The Petitioner asserts that we erred because his prior motion highlighted specific parts of his personal statement, expert opinion, and industry reports that demonstrated the national importance of his proposed endeavor to establish the first prong of the three-prong framework provided in Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016). The Petitioner adds that we also erred in rejecting his expert opinion letter. We did not reject the Petitioner's expert letter. Rather, our prior decisions considered the Petitioner's documents and explained why they did not establish the national importance of the Petitioner's proposed endeavor. With respect to the Petitioner's expert letter, we explained, for example, that it lacked detail of how the Petitioner's specific proposed endeavor of working as a project manager in the process engineering field is nationally important. Further, merely quoting parts of the same documents we concluded did not establish the national importance of his proposed endeavor, without addressing the

issues we raised regarding the documents' insufficiencies, does not establish that we erred as a matter of law or policy.

The Petitioner further argues that by stating, "your repeated contentions are supported by the same evidence submitted previously" we applied the standard for a motion to reopen not a motion for reconsideration. To the extent our statement is unclear, its intent was to convey that the Petitioner repeated the same arguments addressed in previous decisions, and the evidence he referred to in his motion did not demonstrate we erred as a matter of law or policy. The inclusion of this phrase in our analysis does not show that the decision was incorrect based on the evidence in the record of proceedings at the time. Nor does it demonstrate that we applied the incorrect law or policy. Our prior decision properly cited 8 C.F.R. § 103.5(a)(3), which provides guidance for motions to reconsider, and explained that the Petitioner's brief repeated previous arguments, which did not meet the motion to reconsider requirements.

Similarly, the remainder of the instant brief repeats arguments addressed in our prior decisions, for example, that we did not apply the proper legal standard as provided in Dhanasar, Chawathe, and Kazarian v. USCIS, 596 F.3d 1115 (9th Cir. 2010). The Petitioner does not address our prior analysis of these arguments and does not explain how we did not correctly apply these cases in our prior decision. 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").

The Petitioner also submits documents, including a third personal statement and additional industry specific articles, which are new to the record. However, the scope of our review in a motion to reconsider is whether 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). This evidence was not in the record at the time of our prior decision. To the extent the Petitioner would like to present new facts, the proper filing would be a motion to reopen. See 8 C.F.R. § 103.5(a)(2) (A motion to reopen requires a petitioner to state new facts supported by documentary evidence.) We reviewed the evidence, which does not contain arguments regarding whether we erred as a matter of law or policy. Rather, the new statement re-alleges eligibility claims, and the Petitioner does not identify in his brief the relevance of the industry articles, or how it demonstrates we erred as a matter of law or policy.

Consequently, the Petitioner has not established that our previous 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 to warrant reconsideration of our prior decision.

ORDER: The motion to reconsider is dismissed.