U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31676704

Date: JUNE 21, 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 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 Texas Service Center denied the petition, concluding that the record did not establish the Petitioner qualifies for classification as an individual of exceptional ability. The Director did not comment on whether a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the Petitioner's appeal. The matter is now before us 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). 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). Here, the Petitioner submits no new facts or documentary evidence in support of the motion to reopen. For this reason, the motion to reopen must be dismissed.

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 Petitioner generally alleges that the Director "did not give full consideration to the evidence" and did "not properly analyze[]" it, which "violat[ed] the Fifth Amendment of the Constitution." As noted,

however, our review is limited to reviewing our most recent decision. Here, the Petitioner's statements related to the appeal are similarly limited to general assertions that we did "not evaluate all the arguments presented" and the evidence was "not properly analyze[d]."

But the Petitioner has not sufficiently articulated what evidence was not properly analyzed, nor has he specifically indicated how we incorrectly applied law or policy in our prior decision. Likewise, beyond the Petitioner's vague assertion that the Director violated his Fifth Amendment rights, he does not discuss how. For all these reasons, the Petitioner has not established that our prior decision was based on an incorrect application of law or policy based on the evidence in the record of proceedings at the time of our decision. 8 C.F.R. § 103.5(a)(3). As such, the motion to reconsider must be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.