U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31673872

Date: JUNE 28, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, who seeks to establish pharmacies, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that he qualifies for the national interest waiver. We dismissed a subsequent 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). 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 that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, the Petitioner does not state any new facts and does not submit any new documentary evidence. Therefore, the motion does not meet the requirements of a motion to reopen and 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.

On motion, the Petitioner contests the correctness of our prior decision, stating that we did not consider all the evidence that the Petitioner had submitted with the petition and, later, in response to a request for evidence. The Petitioner asserts that "those documents were not properly analyzed by [USCIS], violating the Fifth Amendment of the Constitution of the United States of America." The Petitioner asks that we "reconsider the adverse decision and reopen [the petition] and give full consideration to all the submitted documents."

The only decision properly before us on motion is our December 2023 appellate decision, not the Director's May 2023 denial of the petition. *See* 8 C.F.R. § 103.5(a)(1)(i), which limits the available time to file a motion to reconsider and requires that motions pertain to "the prior decision," which in this case is our December 2023 appellate decision.

In our appellate decision, we referred to the Petitioner's arguments, quoted from her statement and letters from others discussing her proposed endeavor, and cited information from a business plan. We concluded that the Petitioner's plans were vague, conflicting, and insufficiently corroborated, and that the Petitioner had not established the national importance of her proposed endeavor.

On motion, the Petitioner does not address our specific determinations and conclusions or establish that they were in error. Instead, she makes vague and general assertions that we disregarded unspecified evidence. Such assertions do not establish that our appellate decision was incorrect, and do not oblige us to readjudicate the appeal de novo. The Petitioner does not identify any specific documents or other pieces of evidence that we overlooked in our appellate review of the record, and the Petitioner does not explain how discussion or consideration of those materials would have changed the outcome of our December 2023 decision.

On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will 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.