U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30147309

Date: MAR. 1, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner is an education specialist who 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 associated with 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 approved the Form I-140, Immigrant Petition for Alien Workers (petition), but then revoked that approval concluding the Petitioner did not establish eligibility for the national interest waiver. The Director also found that the Petitioner had willfully misrepresented material facts. *See* section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C). We dismissed a subsequent appeal and three ensuing motions. The matter is now before us on a fourth motion; a motion to reopen. The Petitioner bears the burden of proof to demonstrate eligibility 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 motion.

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).

In the most recent decision on the third motion, we withdrew a prior finding of willful misrepresentation of a material fact we attributed to the Petitioner. We also noted that in the third motion, the Petitioner did not contest the revocation on the merits related to the national interest waiver. On that issue, the following quotes reflect some salient facts we observed:

- "In an earlier filing, the Petitioner stated that she 'accepts that she is not eligible for a National Interest Waiver.'"
- "The Petitioner does not argue that she is eligible for the immigration benefit that formed the basis of the underlying petition. For this reason, the revocation still stands, and we will dismiss the motion."

A review of the brief the Petitioner submitted with her second motion provides: "[The Petitioner] accepts the [Administrative Appeals Office's] decision that her legal arguments were not sufficient and her proposed endeavor is not one that satisfies the *Dhanasar* analysis."[1]

Now in the motion before us, the Petitioner states "I would like to provide and explain that I am eligible for a National Interest Waiver." First, the matters the Petitioner must first overcome within this motion are limited to the issues discussed within our most recent decision; the decision on their third motion. 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, and because she previously stated that she did not qualify for a discretionary waiver of the job offer requirement in the national interest, we will not consider that aspect in this motion to reopen. We note the fact that we simply mentioned her eligibility for a national interest waiver by observing her own statements that she did not qualify for it, 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 third motion dismissal through new evidence in this motion to reopen.

We further address the numerous motion filings based on the original petition. Multiple motion filings serve to thwart the strong public interest in bringing issues to a close, particularly in immigration proceedings where every delay works to the filing party's advantage who wishes to remain in the United States. *Cf. Hernandez-Ortiz v. Garland*, 32 F.4th 794, 800–01 (9th Cir. 2022) (citing *INS v. Doherty*, 502 U.S. 314, 323 (1992) and *INS v. Abudu*, 485 U.S. 94, 107–08 (1988)). U.S. Citizenship and Immigration Services has the latitude and discretion to be restrictive in granting motions, as granting them too freely can create endless delays to a final resolution, not to mention needlessly wasting government resources attending to repeated requests. *Cf. Abudu*, 485 U.S. at 108. This demonstrates why a filing party bears a "heavy burden" when they seek a motion, and that burden incrementally increases with each subsequent motion filing. *Id*.

The Petitioner has not demonstrated that we should reopen the proceedings.

ORDER: The motion to reopen is dismissed.

[1] This is a reference to the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016); a decision that provides the framework for adjudicating national interest waiver petitions.