U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41636706

Date: MAR. 05, 2026

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).

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish that a waiver of the required job offer, and thus of a labor certification, would be in the national interest. We dismissed an appeal and a subsequent motion to reopen. 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 motion.

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).

On motion, the Petitioner submits documentation of the Petitioner's "current U.S. work as a B737NG simulator instructor, training logs, the formation of his U.S. aviation consulting and training company, additional U.S. recognitions, and expanded professional memberships." The Petitioner states that this evidence "significantly strengthens" his eligibility for the requested benefit.

However, the scope of the present motion is limited to the correctness of our prior decision dismissing the motion to reopen. The prior decision did not address the Petitioner's underlying eligibility for the requested classification. Rather, we dismissed the motion because the Petitioner submitted only a receipt notice for a newly filed Form I-140, Immigrant Petitioner for Alien Worker, which did not satisfy the regulatory requirements for a motion to reopen. Because the Petitioner has not provided

new facts to establish that we erred in dismissing the motion to reopen or that would otherwise warrant reopening of the proceeding, we have no basis to reopen our prior decision.

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.

On motion, the Petitioner asserts that the prior motion denial incorrectly stated that the only new evidence submitted with the filing of a new Form I-140 and contends that this statement is "incompatible with the contents of the record at the time." However, the Petitioner does not identify any additional evidence that was submitted with the prior motion to reopen beyond the filing of the new petition.

The Petitioner must show that our prior motion dismissal itself contained a legal or policy error. Here, the petitioner does not point to specific instance in which we misapplied the law or applied an incorrect legal standard in the prior decision. A disagreement with our weighing of the evidence does not constitute legal error and is insufficient to sustain a motion to reconsider. We reiterate that the purpose of a motion to reconsider is to demonstrate a misapplication of law or policy in the most recent prior decision, not to re-adjudicate the petition anew. *See, e.g.*, *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit, in essence, the same brief and seek reconsideration by generally alleging error in the prior 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.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. 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.

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.