U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30251602

Date: MAR. 11, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner works as a general and operations manager 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 denied the Form I-140, Immigrant Petition for Alien Workers (petition). We summarily dismissed a subsequent appeal, and the Petitioner now files a motion to reopen and a motion to reconsider. 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).

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 most recent decision, the decision the Petitioner contests with these motions, was our summary dismissal of his appeal. We summarily dismissed his appeal because even though he discussed his qualifications for the immigrant visa, that discussion was the same or was very similar to the arguments he presented before the Director. Our summary dismissal importantly noted the Petitioner did not address the specific findings in the Director's denial, nor did his brief claim any erroneous conclusion

of law or statement of fact in the Director's decision. Those are grounds for a summary dismissal under the regulation at 8 C.F.R. § 103.3(a)(1)(v) as well as before the Board of Immigration Appeals. Summary dismissal of an appeal is appropriate when the filing party only asserts the underlying trier of fact came to the wrong conclusion or expresses general disagreement with the lower decision and "fails to specify the reasons for the appeal." *Matter of Valencia*, 19 I&N Dec. 354, 355–56 (BIA 1986); *Matter of Davis*, 20 I&N Dec. 536, 537–38 (BIA 1992); *Matter of Keyte*, 20 I&N Dec. 158, 159 (BIA 1990); *Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988); *Matter of Lodge*, 19 I&N Dec. 500, 501 (BIA 1987); *Matter of Holguin*, 13 I&N Dec. 423, 425 (BIA 1969). Where a question of law is presented, supporting authority should be included, and where the dispute is on the facts, there should be a discussion of the particular details contested. *Valencia*, 19 I&N Dec. at 355.

Our summary dismissal of the Petitioner's appeal did not include any analysis on the merits of his claims for the immigrant visa. Now in the motions before us, the Petitioner presents evidence and arguments regarding the merits of his eligibility relating to the national interest waiver petition. The matters the Petitioner must first overcome within this motion are limited to the issues discussed within our most recent decision; the appeal's summary dismissal. 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, we will not consider that aspect in these motions. We note the fact that we simply mentioned his eligibility for a national interest waiver by observing his own conclusory statements, 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 his appeal's summary dismissal.

The Petitioner has not demonstrated that we should either reopen the proceedings or reconsider our decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.