U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36381117

Date: MAR. 11, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a general and operations manager, seeks employment-based second preference (EB-2) classification as either a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 that the Petitioner qualified as a member of the professions holding an advance degree or as an individual of exceptional ability, and that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed a subsequent appeal. The Petitioner also filed two successive combined motions to reopen and reconsider, which we dismissed because the Petitioner had not met the requirements of a motion to reopen or reconsider. The matter is now before us on a third 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).

In our initial decision dismissing the appeal, we explained how the Petitioner did not address nor contest the Director's adverse decision regarding her qualification for the EB-2 classification, thereby abandoning her claim of eligibility for that classification, citing, *inter alia*, *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (providing that an issue not raised on appeal is waived). We dismissed the Petitioner's first combined motions to reopen and reconsider because the motions were untimely filed. In our latest decision dismissing the combined motions to reopen and reconsider, we determined that the Petitioner had not established that our previous decision was incorrect.

On this third combined motions to reopen and reconsider, the Petitioner does not address the basis for which we dismissed the prior combined motions nor discuss her qualification for the underlying EB-2 classification. Rather, the Petitioner asserts that she is submitting new evidence including a business plan, an expert opinion letter, and industry reports and articles to demonstrate her eligibility for a discretionary national interest waiver. Because the current motion to reopen does not state new facts material to the basis for which we dismissed the second motion, it does not satisfy the requirements of a motion to reopen. 8 C.F.R. § 103.5(a)(2).

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 to reconsider, the Petitioner does not explain how we erroneously dismissed her last combined motions. The Petitioner also does not explain how our appellate decision was based on an incorrect application of law or USCIS policy and that our decision was incorrect based on the evidence in the record at the time of the decision.

Although the Petitioner has submitted evidence in support of her motion to reopen, the Petitioner has not offered new evidence or facts on motion to overcome the stated grounds for dismissal in our appellate 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, we will dismiss the Petitioner's motion to reopen and motion to reconsider. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.