U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36385174

Date: MAR. 11, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a training and development specialist, 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 Petitioner 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 filed 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 second 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).

On motion, the Petitioner submits additional documents, including a brief, an updated business plan, and industry reports and articles on business and entrepreneurship, as well as copies of previously submitted evidence. The Petitioner asserts that the new evidence "directly addresses the deficiencies cited in the denial letter." Furthermore, the Petitioner claims that the submitted documents demonstrate his eligibility for the underlying EB-2 classification and the national waiver.

In denying the petition, the Director determined that the Petitioner qualified for the EB-2 classification as a member of the professions holding an advanced degree, and that the Petitioner's proposed endeavor has substantial merit. The Director determined, however, that the Petitioner did not establish

the proposed endeavor's national importance, that he is well positioned to advance it, and that, on balance, it would benefit the United States to waive the job offer requirement. We dismissed the Petitioner's appeal due to his failure to establish his proposed endeavor's national importance. We also dismissed his subsequent motion to reopen and reconsider because he did not meet the filing requirements for such motions. The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

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 asserts that "the initial decision did not apply the legal standards" of the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). However, it is unclear whether the Petitioner is referring to the Director's decision denying the petition or our most recent decision dismissing his motions. If the Petitioner is contesting the Director's decision, as previously stated, the scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). If the Petitioner is instead contesting our most recent decision, the Petitioner's submission establishes no error in that decision, as he merely reasserts arguments we have already considered and found unpersuasive in our initial decision. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision"). Moreover, 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 evidence in support of his 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). The Petitioner's appeal therefore remains dismissed, and his underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.