U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36468728

Date: MAR. 12, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a dentist, 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 eligibility for the benefit sought. The Petitioner appealed the Director's decision, which we dismissed because the Petitioner had not personally signed her Form I-140 and therefore had not met requirements at 8 C.F.R. § 103.2(a)(2) that petitioners sign their benefit requests. We then dismissed a subsequent combined motions to reopen and reconsider because the Petitioner did not specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. 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 apologizes for the error that she made while completing the Form I-140 and requests that we reconsider her signature so her case can be reviewed, and she can proceed. She explains that the law firm she hired to prepare her petition instructed her to sign the form in that manner and even filed the appeal and first combined motions to reopen and reconsider defending the position that the form contained a valid signature. In support of her motion, the Petitioner submits a document that appears to be an email exchange with the law firm, dated September 28, 2022, containing instructions on how to sign the forms. Here, the Petitioner is essentially making an ineffective assistance of counsel claim.

In *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988), the Board of Immigration Appeals established a framework for asserting and assessing claims of ineffective assistance of counsel. *Dakane v. U.S. Att'y Gen.*, 399 F.3d 1269, 1273-74 (11th Cir. 2005) (requiring "substantial, if not exact, compliance with the procedural requirements of *Lozada*"); *see also Matter of Melgar*, 28 I&N Dec. 169, 171 (BIA 2020). Under *Lozada*, a motion alleging ineffective assistance of counsel must:

- Include an individual's affidavit detailing their agreement with the allegedly ineffective counsel regarding actions to be taken and any representations by counsel;
- Demonstrate that the individual informed counsel of the ineffectiveness allegations and provided the lawyer an opportunity to respond; and
- Indicate whether a complaint was filed with appropriate disciplinary authorities regarding any violation of counsel's ethical or legal responsibilities, and if not, why not.

Dakane, 399 F.3d at 1274 (quoting *Matter of Lozada*, 19 I&N Dec. at 639).

In this instance, the Petitioner has not substantially complied with *Lozada* requirements. We note, the record on motion does not include any supporting evidence reflecting that the Petitioner has complied with the requirements for such a claim as described in *Lozada*, including an affidavit detailing her agreement with prior counsel, evidence of notice to prior counsel of the ineffectiveness allegations, and the filing of a complaint with disciplinary authorities, to warrant reopening. Additionally, while the Petitioner submits new evidence, she does not state new facts that establish an erroneous conclusion of law or statement of fact in the underlying decision being appealed. The Petitioner's motion to reopen must therefore be dismissed.

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 appeal. 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. Therefore, the motion will be dismissed.

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