U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31139051

Date: MAY 8, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks second preference immigrant classification (EB-2) as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 the Petitioner did not establish: (1) the Petitioner qualified for the EB-2 classification; (2) the national importance of the proposed endeavor; and (3) that it would be in the United States' interest to waive the requirements of a labor certification. We dismissed the appeal because the Petitioner did not address or contest the Director's decision relating to qualification for the EB-2 classification; and therefore, the Petitioner abandoned this eligibility claim.[1] In addition, we reserved a determination on the Petitioner's eligibility for a national interest waiver.[2] 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). 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 provides previously submitted copies of his education and experience credentials and business plan. Here, the Petitioner does not offer new facts in order to qualify for the

[1] An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where applicants don not otherwise meet their burden of proof).

eligibility requirements of a motion to reopen. Moreover, the evidence does not overcome our determination that the Petitioner failed to address or contest his eligibility for the underlying EB-2 classification on appeal.

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 does not contest the correctness of our prior decision regarding the underlying EB-2 classification issue. In fact, the Petitioner's brief makes no mention of his failure to argue his eligibility for EB-2 classification. Instead, the Petitioner's brief exclusively discusses his qualification for a national interest waiver under the three-prong analytical framework.[3]

Although the Petitioner has submitted evidence, the Petitioner has not established eligibility for motion to reopen requirements. In addition, the Petitioner has not demonstrated that our previous decision was based on an incorrect application of law or policy at the time we issued our decision to meet the motion to reconsider requirements. 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.

[3] *See Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016).