U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30415046

Date: MAY 15, 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 as a member of the professions holding an advanced degree, 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 did not establish the proposed endeavor's national importance or that a waiver of the requirement of a job offer would be in the national interest. We dismissed a subsequent appeal. The Petitioner then filed a motion to reconsider the dismissed appeal. We dismissed that motion. 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 motions.

A motion to reopen is based on new facts that are supported by documentary evidence, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3).

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes within the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." A motion to reopen that does not satisfy the applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

A motion to reconsider on the other hand must: (1) state the reasons for reconsideration, (2) be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy, and (3) establish that the decision was incorrect based on the evidence in

the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider that does not satisfy these requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

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 and arguments to the extent they pertain to our latest decision dismissing the motion to reconsider. 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 Reopen

In support of the current motion, the Petitioner submitted a new statement and several industry articles. Evidence for a motion to reopen must contain new pertinent facts. 8 C.F.R. § 103.5(a)(2). We interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes within the original petition. 8 C.F.R. § 103.5(a)(2). The new statement speaks to the Petitioner's work history and makes generalized claims regarding the economic impact of his employment. This information does not constitute new facts, as the record is replete with evidence on the Petitioner's work history, and similar assertions concerning the economic ripple effects of his employment. The statement is a repackaging of material that has been previously submitted in this case. As such, the statement's content does not provide us with new pertinent information that warrants reopening.

Concerning the newly submitted industry articles, all but one was published after the petition's filing on January 11, 2019. A petitioner must meet all the eligibility requirements of the petition at the time of filing. 8 C.F.R. § 103.2(b). Moreover, they all discuss the construction industry's economic impact generally and do not speak specifically to the national importance of the Petitioner's proposed endeavor or if he personally is well positioned to advance the endeavor. In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016).

Here, the Petitioner has not provided new facts or evidence to warrant reopening. As such, we have no basis to reopen our prior decision.

B. Motion to Reconsider

The Petitioner has also not provided a sufficient basis for us to reconsider our decision. In the present motion, the Petitioner first argues that we applied a stricter standard of proof in his case. However, he does not point to specific instances of this in our prior decision. 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). Our review of the decision and the record finds no instances of us applying a stricter standard as the Petitioner asserts. The motion then restates much of the evidence in the record and implores us to reexamine it to come to a different conclusion. Disagreeing with our conclusions without showing that we erred as a matter of law is not a ground to reconsider our decision. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006).

The Petitioner further alleges that we failed to perform a totality analysis when considering if the Petitioner is well positioned to advance the proposed endeavor. In his discussion of this point the Petitioner expounds on two examples. He contends that we erred in stating that the record did not adequately establish the Petitioner's proposed endeavor remained the same when he changed positions and that the recommendation letters are not material, relevant, or probative. In isolating these two points, he overlooks the rest of our analysis. Our decision on the prior motion noted and analyzed much of the documentary evidence, such as the Petitioner's documentation regarding his education, his work history, and his letters of recommendation in relation to the relevant factors discussed under the *Dhanasar* framework's second prong.[1]

Furthermore, although the Petitioner disagrees with our analysis on these two points, disagreeing with our conclusions generally is not a ground for us to reconsider our decision. *See e.g., Matter of O-S-G-*, 24 I&N Dec. at 58. We note our initial decision discussed our reasoning on these two issues extensively and we see no error in this analysis. As such, the Petitioner has not shown that we erred in this analysis.

Finally, the motion states that we ignored the previously provided pertinent precedent in *In re F-E-*, 2017 WL 1281865 (AAO Mar. 20, 2017). However, the Petitioner is incorrect, this is a non-precedent decision. This non-precedent decision concerns a metallurgical engineer whose proposed endeavor focused on developing safe and environmentally friendly mining practices, which could be used throughout the mining industry. This decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Thus, for the reasons cited above, the Petitioner has not demonstrated that we erred in our application of the law or USCIS policy.

Because the Petitioner has not established that our prior decision was based on an incorrect application of law or policy or that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision, the Petitioner has not met the requirements of a motion to reconsider at 8 C.F.R. § 103.5(a)(3). As the Petitioner has also not met the requirements of a motion to reopen, the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[1] We are not required to discuss every piece of evidence, so long as our decisions give reasoned consideration to the evidence submitted. *See Morales v. INS*, 208 F.3d 323, 328 (11th Cir. 2000).