U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38128349

Date: MAY 15, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a barber and barber instructor and entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

Service Center Operations (SCOPS) denied the petition, concluding that the record did not demonstrate the Petitioner merits a discretionary waiver of the job offer requirement in the national interest. We dismissed the appeal and two subsequent combined motions to reopen and reconsider. The matter is now before us on a third combined motion 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). 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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (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).

The Petitioner proposes to establish a barbershop and barber school business for which he would work as its manager, barber, and barber instructor. As noted above, SCOPS denied the petition. In our decision dismissing the appeal, we withdrew SCOPS' determination that the Petitioner established he was an individual of exceptional ability and concluded that he did not meet any of the six evidentiary criteria for classification as an individual of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii). We also reasoned that although the Petitioner's proposed endeavor has substantial merit, it does not have national importance because the record lacked evidence to demonstrate his endeavor would provide a

broad innovation to the personal care and barber field.[1] We then dismissed the Petitioner's two subsequent combined motions to reopen and reconsider as they did not meet the applicable requirements. 8 C.F.R. § 103.5(a)(4). We incorporate our prior decisions by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on this third combined motion.

In dismissing the immediate prior combined motion to reopen and reconsider, we determined the Petitioner did not demonstrate that our prior 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. We also determined that the new evidence submitted on motion did not overcome the stated grounds for dismissal in our prior appellate decision, noting that we correctly concluded the Petitioner did not establish eligibility for EB-2 classification as an individual of exceptional ability.

A. Motion to Reopen

On motion to reopen, the Petitioner neither addresses the basis for which we dismissed the immediate prior combined motion nor does he support the instant motion with new, material documentary evidence. Rather, on this third combined motion, the Petitioner submits an almost identical brief to the one submitted with the previous combined motion and repeats his request for a discretionary national interest waiver. The Petitioner specifically adds that "regarding the national importance prong . . . past decisions were made with a certain level of inconsistency when evaluating the evidence of record" and includes two new industry articles identifying the role of barber shops and mentorship of the youth in the community. While these articles discuss the potential of barber shops to create a meaningful impact for the community, they do not speak specifically to the Petitioner's endeavor he proposes to undertake and how the proposed endeavor may have national or even global implications within a particular field, significant potential to employ U.S. workers, or other substantial positive economic effects reflecting the endeavor's national importance, as contemplated by *Matter of Dhanasar*, 26 I&N Dec. at 889-90. Regardless, on this third combined motion, the Petitioner does not specifically address our immediate prior decision, nor does he address whether he qualifies for EB-2 classification.

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 second combined motion. 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 and the motion to reopen will be dismissed. *See* 8 C.F.R. § 103.5(a)(2), (4).

B. Motion to Reconsider

On motion to reconsider, the Petitioner does not contest our prior decision's correctness or explain how we erroneously applied law or policy to satisfy the motion to reconsider requirements. Instead,

[1] Because the record did not demonstrate eligibility for the underlying visa classification or national importance, we declined to analyze the second and third prongs of the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016).

he essentially reargues claims of his eligibility for a national interest waiver without pointing to how we erred in our previous decision as a matter of law or policy. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit, in essence, the same brief and seek reconsideration). The purpose of a motion to reconsider is to show error in the most recent prior decision, not to re-adjudicate the petition anew. *See id.*

Because 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 or that it was incorrect based on the record at the time, the motion to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(3)-(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.