U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38268529

Date: MAY. 16, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks employment-based second preference (EB-2) 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).

SCOPS denied the petition, concluding that the Petitioner did not establish that a waiver of the job offer requirement is in the national interest. We dismissed a subsequent appeal, a motion to reconsider, and two combined motions to reopen and reconsider. The matter is now before us on a fourth motion, a 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 motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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).

On motion to reopen, the Petitioner does not state new facts, supported by documentary evidence, that establish proper cause to reopen the proceedings. *See* 8 C.F.R § 103.5(a)(1)(i); (a)(2). The Petitioner submits on motion an undated personal statement, which he asserts supports his eligibility for a national interest waiver and his claim of ineffective assistance of counsel, already raised in his last two combined motions. But most of the facts in the Petitioner's personal statement, such as information about the Petitioner's background, the proposed endeavor, and the Petitioner's experience working with his prior representatives, are not new. The Petitioner asserts in his statement that "important supporting documents were never submitted [by the prior representatives], which likely affected the outcome of my petition" and that the process felt "generic and impersonal" rather than a "tailored legal strategy." These allegations are not new; they are essentially the same as the claims previously presented in the Petitioner's last motion. In our last decision we concluded that these

assertions were insufficient to demonstrate prejudice, as required in an ineffective assistance of counsel claim. We noted, for example, that the Petitioner did not explain what "supporting documents" should have been submitted and, although asserting that his new counsel seeks to use a new legal strategy, new counsel instead essentially reasserted the same or similar claims—relying on the same supporting documents—to assert his eligibility for a national interest waiver.

The statement also does not demonstrate substantial compliance with *Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988), also required when presenting an ineffective assistance of counsel claim. *Lozada* requires that a motion alleging ineffective assistance of counsel must: 1) include an affidavit from the alien attesting to the relevant facts; 2) demonstrate that former counsel has been advised of the ineffectiveness allegations and allowed an opportunity to respond; and 3) indicate whether a complaint has been filed with the appropriate disciplinary authorities and if not, why not. *Id.* The undated personal statement is not a sworn affidavit, and although the Petitioner asserts that he did not file a formal complaint against his prior representatives because he fears possible retaliation, the Petitioner has not demonstrated that the prior representatives have been advised of these allegations and provided an opportunity to respond.

The statement submitted on motion, although new, does not sufficiently establish that the Petitioner was prejudiced by his prior representatives, does not demonstrate the Petitioner's substantial compliance with *Lozada*, and does not otherwise demonstrate new facts that would warrant reopening the proceedings. As such, we have no basis to reopen our prior decision and the motion to reopen will be dismissed. 8 C.F.R. § 103.5(a)(4).

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.

On motion to reconsider, the Petitioner contends that our most recent decision incorrectly applied *Matter of Lozada*. In our last decision we concluded that the Petitioner did not substantially comply with the *Lozada* requirements and that the Petitioner did not establish that he was prejudiced by prior counsel's alleged ineffective assistance. In support of the Petitioner's claim, he relies on *Dakane v. U.S. Att'y Gen.*, 399 F.3d 1269 (11th Cir. 2005). The Petitioner asserts that in *Dakane*, the basis for denial of the motion to reopen was not failure to substantially comply with *Lozada*, but the failure of the applicant to demonstrate prejudice. The Petitioner asserts that "[a]ccordingly, where, as here, substantial compliance with the procedural framework set forth in *Lozada* is not required."

The Petitioner's claim is without merit. The Eleventh Circuit Court of Appeals in *Dakane* did not conclude that substantial compliance with *Lozada* is not required; it stated the opposite. While it was not disputed by the parties that the applicant in that case had complied with the procedural requirements of *Lozada*, the court stated that it "has previously determined that the BIA may require aliens to satisfy the three part *Lozada* test" and that it agreed that "substantial, if not exact, compliance" is required. *Dakane*, 399 F.3d at 1274. The Petitioner's assertion that substantial compliance with

Matter of Lozada is not required is not supported by law or policy and we are unpersuaded by the Petitioner's claim.

The Petitioner's motion to reconsider does not otherwise establish that our prior decision was based on an incorrect application of law or policy. Instead, the Petitioner repeats the same claims, previously presented, that the Petitioner was harmed by his prior representatives' ineffective assistance and that he is eligible for a national interest waiver. The Petitioner asserts, for example, that the prior submissions were "materially deficient, failing to advance key arguments, omitting relevant evidentiary support, and neglecting to preserve important procedural rights." But, similar to the Petitioner's prior combined motion, the Petitioner does not explain what these deficiencies were, what key arguments were not advanced, what relevant evidence was omitted, and what procedural rights were lost. 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 motion to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(4).

The Petitioner's contentions in the current motion merely reargue facts and issues we have already considered in our previous decisions. *See e.g., 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 seeks reconsideration by generally alleging error in the prior decision). We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.