U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42968866

Date: MAY. 18, 2026

Motion on Administrative Appeals Office Decision

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

The Petitioner, an industrial and quality engineer, 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 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 Petitioner did not establish eligibility for the underlying EB-2 classification or that a waiver of the job offer requirement is in the national interest. We dismissed a subsequent appeal, followed by five motions to reopen or reconsider. The matter is now before us on a combined motion to reopen and motion to reconsider.

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). 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 has the potential to change the outcome). 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).

On motion to reopen, the Petitioner submits new evidence that he claims establishes his eligibility for a national interest waiver under the analytical framework set forth in *Matter of Dhanasar*. On motion to reconsider, the Petitioner asserts that we incorrectly applied the *Dhanasar* framework and that the record at the time of the decision established his eligibility. However, the Petitioner does not address or overcome the basis for dismissal in the latest decision, in which the only issue was whether we erred in our decision not to reopen the proceedings following an untimely motion to reconsider.

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 on motion to reopen to the extent that it pertains to our latest decision. But the new facts and documentary evidence do not pertain to our latest decision, and therefore do not establish that reopening the proceedings is warranted. *See Matter of Coelho*, 20 I&N Dec. at 473, 8 C.F.R. § 103.5(a)(2). Additionally, the

Petitioner's motion to reconsider does not establish that the latest decision—which, again, related only to whether we erred by not reopening the proceedings after an untimely motion—was incorrect. 8 C.F.R. § 103.5(a)(3). Therefore, the combined motion must be dismissed.

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 stated new facts, with documentary evidence, that merit reopening the proceedings. 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.

NOTICE: Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.