U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37501281

Date: MAY 19, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, an English as a second language teacher, 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 the Petitioner did not establish that a waiver of the required job offer would be in the national interest. Specifically, SCOPS found the Petitioner did not demonstrate his proposed endeavor has substantial merit and national importance; he is well-positioned to advance the endeavor; or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. We dismissed a subsequent appeal, concurring with SCOPS that the Petitioner had not demonstrated the national importance of his proposed endeavor and reserving our opinion as to whether the record establishes the remaining requirements of the analytical framework of Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016). We dismissed two subsequent motions to reconsider. The matter is now before us on a third motion to 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 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, the Petitioner contests the correctness of our prior decision. The Petitioner asserts that the denial of his case "fails to properly weigh the national importance of his endeavor, misapplies the Dhanasar framework by setting an unreasonably high bar for demonstrating that he is well-positioned, and ignores the labor market realities that justify a waiver of the job offer requirement." He also

asserts that the denial "reflects a narrow reading of the legal standards without addressing the substantive policy considerations that support the Petitioner's eligibility." However, our review on motion is limited to reviewing our latest decision. 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). A motion is not an opportunity to restate previously considered and rejected arguments. The Petitioner's arguments related to SCOPS's decision and our dismissal of his appeal do not address the latest decision in these proceedings. In our decision on the Petitioner's second motion, we properly considered only the correctness of our prior decision, rather than questions of law, policy, and fact de novo as we did on appeal. The remainder of the Petitioner's arguments in the brief filed with this motion 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) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision").

As the Petitioner has not established that we erroneously applied law or policy in dismissing his previous motion to reconsider or that our decision was incorrect based on the evidence in the record at the time, he has not established that the instant motion satisfies the requirements for a motion to reconsider under the regulations. We will not re-adjudicate the petition anew and, therefore, the petition remains denied.

ORDER: The motion to reconsider is dismissed.