U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38197089

Date: MAY 19, 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 an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this classification. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

SCOPS denied the Form I-140, Immigrant Petition for Alien Workers (national interest waiver), concluding that the Petitioner did not establish eligibility for the EB-2 immigrant classification or a national interest waiver. SCOPS dismissed a combined motion to reopen and reconsider and we dismissed the appeal and subsequent combined motion to reopen and reconsider. The matter is before us on a second 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 combined motion to reopen and 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). The scope of a motion is limited to the prior decision. 8 C.F.R. § 103.5(a)(1)(i). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

In the previous motion, the Petitioner asserted we erred in our appeal decision by only evaluating SCOPS' motion decision, not the original denial. We noted that the matter before us was not evaluating the national interest waiver denial, but whether SCOPS correctly determined the Petitioner did not meet the requirements to reopen and reconsider the denial. The Petitioner also reasserted her eligibility for the underlying EB-2 classification as an individual of exceptional ability and for a national interest waiver. She included new documents, which were previously not submitted to SCOPS, including letters of employment, her tourist guide license, her company earnings statement, and additional support letters. However, we did not consider the Petitioner's new evidence for the first time on appeal and similarly did not consider the additional new evidence submitted with the

combined motion. We explained that the Petitioner was put on notice of the required evidence and given a reasonable opportunity by SCOPS to provide it before the petition was denied. We dismissed the combined motion, concluding that the Petitioner did not establish our prior decision was based on an incorrect application of law or policy or that our decision was incorrect based on the evidence in the record at the time of the decision.

With the instant motion, the Petitioner indicates that new documents are submitted that show "the need to reopen the case in accordance with 8 C.F.R. § 103.5(a)(2), which was not observed." The evidence includes previously submitted documents related to her claim that she is eligible for the underlying EB-2 classification as an individual of exceptional ability and for a national interest waiver. As noted in our prior decisions, we will not consider new evidence for the first time because SCOPS put the Petitioner on notice of the required evidence and provided a reasonable opportunity to provide it before the petition was denied.[1] On motion, the Petitioner has not specified how we erred in our analysis of the evidence present at the time of our prior decision.

Although the Petitioner has submitted documentation in support of the motion to reopen, she has not established her eligibility. 8 C.F.R. § 103.5(a)(2). 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. 8 C.F.R. § 103.5(a)(3). In accordance with 8 C.F.R. § 103.5(a)(4), the combined motion will therefore be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[1] *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").