U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31218695

Date: MAY 28, 2024

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 in addition to a national interest waiver (NIW) 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).

The Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), and we summarily dismissed her subsequent appeal because she did not submit a brief with her appeal, nor did she allege any erroneous conclusion of law or fact in the denial decision. We also dismissed a motion to reopen and reconsider the Petitioner filed following our appeal dismissal because her submission did not meet the requirements of a motion to reopen (8 C.F.R. § 103.5(a)(2)) because it did not address specific new facts, nor did it satisfy the requirements of a motion to reconsider (8 C.F.R. § 103.5(a)(3)) by identifying any erroneous conclusion of law or fact alleging error in our prior decision. A favorable outcome for this motion to reopen and reconsider would require that she submit new facts supported by evidence, or that she show our most recent decision was erroneous in some manner.

The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motions.

The issues here are whether the Petitioner: (1) has submitted new facts, supported by documentary evidence, to warrant reopening, and (2) has established that we incorrectly applied the law or USCIS policy in dismissing her first combined motion to reopen and reconsider.

And the matters the Petitioner must first overcome within this motion are limited to the issues discussed within our most recent decision; the decision on her first motion; not the Director's denial or our appeal dismissal. General support that a motion must first overcome the most recent decision lies within the regulation at 8 C.F.R. § 103.5(a)(1)–(3) where it repeatedly discusses the underlying or latest decision, it limits the time one has to file a motion after the most recent decision, and it references jurisdiction resting with the entity who made the latest decision. This demonstrates that any motion must first address and overcome the most recent adverse decision before the filing party's arguments may move on to any issue that arose in a previous petition, appeal, or motion filing.

Nevertheless, the motion brief focuses first on an allegation of some shortcoming the Director committed. Then the Petitioner shifts to argue on the merits of her eligibility for the NIW petition. She does not address our dismissal of the most recent filing on her first combined motions. Because of that failing, the Petitioner has not met this motion's requirements, and we will dismiss the current motions.

Multiple motion filings serve to thwart the strong public interest in bringing issues to a close, particularly in immigration proceedings where every delay works to the filing party's advantage who wishes to remain in the United States. *Cf. Hernandez-Ortiz v. Garland*, 32 F.4th 794, 800–01 (9th Cir. 2022) (citing *INS v. Doherty*, 502 U.S. 314, 323 (1992) and *INS v. Abudu*, 485 U.S. 94, 107–08 (1988)). USCIS has the latitude and discretion to be restrictive in granting motions, as granting them too freely can create endless delays to a final resolution, not to mention needlessly wasting government resources attending to repeated requests. *Cf. Abudu*, 485 U.S. at 108. This demonstrates why a filing party may encounter procedural hurdles when they seek a motion, and that burden incrementally increases with each subsequent motion filing. *Id.*

In some instances, simply refiling a new petition could be a more expeditious and less burdensome method to possibly receive a favorable decision. While we do not suggest that this Petitioner should abandon their efforts of filing future motions with this office and instead that they file a new petition, it is a factor they may wish to consider.

The Petitioner has not demonstrated that we should either reopen the proceedings or reconsider our decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.