U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31218674

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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), and we dismissed his subsequent appeal because the Petitioner did not establish that he qualifies as an individual of exceptional ability, while reserving his NIW claims because evaluating them would serve no purpose without him showing he qualifies for the EB-2 classification.

We also dismissed a motion the Petitioner filed following our appeal dismissal because his submission did not meet the requirements of a motion to reconsider by identifying any erroneous conclusion of law or fact alleging error in our prior decision. 8 C.F.R. § 103.5(a)(3). A favorable outcome for this motion to reopen and reconsider would require that the Petitioner submit new facts supported by evidence, or that he 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. A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(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).

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 his 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 his 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.

After filing the petition before us in this motion, the Petitioner filed a new NIW petition in February of 2023. Within the present motions, the Petitioner states they believe that petition warrants a favorable outcome. The Petitioner requests we grant this motion, determine he qualifies for both the EB-2 classification as well as the NIW, and that we sustain the appeal. As the Petitioner states in the appeal brief, he makes this request to avoid filing a new Form I-485, Application to Register Permanent Residence or Adjust Status to support the new NIW petition he believes warrants an approval.

We begin with the requirements of the motions before us. The motion brief focuses first on an allegation of some shortcoming the Director committed. Then the Petitioner shifts to argue on the merits of his eligibility for the NIW petition. But he does not address our dismissal of the most recent filing on his 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.*

Returning to the Petitioner's request in this motion, we will not grant this motion and determine he qualifies for the NIW based on a separate record of proceeding. First, we generally will only consider evidence that is part of the record and associated with a single petition. In other words, we will not apply the claims and evidence to this petition that were submitted with a separate petition at a different time. Each case must be decided on its own facts with regard to the sufficiency of the evidence presented. The regulation repeatedly reflects that an eligibility determination on a benefit request will be based on information contained in the record of proceeding. 8 C.F.R. §§ 103.2(b)(10), (11), (14), (16)(i)–(ii). Additionally, a determination on the facts properly rests on what is implicated within the record. "Other cases presenting different allegations and different records may lead to different conclusions." *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 507 (2023) (Jackson, J., concurring).

Second, the Petitioner is required to establish he is eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1). *See also Ahmed v. Mukasey*, 519 F.3d 579, 582 (6th Cir. 2008) (citing 8 C.F.R. § 103.2(b)(1)); *Karakenyan v. U.S. Citizenship & Immigr.*, 468 F. Supp. 3d 50, 52 (D.D.C. 2020). So for his request to be applicable, he must show that every claim and form of evidence he submitted with the second petition existed in the very same way on the day he

submitted this petition before us. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and the form instructions. 8 C.F.R. § 103.2(b)(1). The Petitioner made no effort to make such a showing in this motion.

Third, the Petitioner does not offer any law, precedent, or policy that would support the position of allowing factors outside of a foreign national's eligibility for an immigrant classification to exert any sway on the decision of whether to approve or deny a petition. While an NIW petition encompasses a discretionary element, that discretion does not extend to or apply to the situation the Petitioner proposes.

And finally, we do not exercise jurisdiction over the Form I-485 the Petitioner references. That removes from our authority any means to decide how USCIS will treat that filing. In short, the reasons we will not acquiesce to the Petitioner's request are numerous.[1]

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.

[1] Our analysis here does not prevent the Petitioner from making a similar request to the office holding jurisdiction over the Form I-485 in question. However, we offer no indication of whether that authority might comply with the request.