U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35031615

Date: NOV. 6, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner is a consultant who 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).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the Petitioner's appeal and two subsequent motions – the first, a combined motion to reopen and reconsider, and the second, a motion to reopen.[1] The matter is now before us on a third motion – a 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 motion.

As a preliminary matter, we note that the brief the Petitioner has provided in support of the current motion contains an incomplete and inaccurate summary of the procedural history concerning this petition, which is one of three national interest waiver (NIW) petitions that this Petitioner has filed.[2] The Petitioner first states that the "Texas Service Center issued an RFE [request for evidence] on November 22, 2023." However, the record shows that a denial of this petition was issued on December 12, 2022, and that an RFE pertaining to this petition was issued on May 12, 2022. The November 2023 RFE referenced in the Petitioner's motion brief does not pertain to this petition, but rather to a subsequent petition that the Petitioner filed in July 2023. The Petitioner continues with a confusing reference to "an appeal motion combined motion to reopen and reconsider" with an issue date of July 18, 2024. The record shows that the July 2024 decision was our dismissal of a second motion

[1] Although we recognized that the Form I-1290B, Notice of Appeal or Motion, indicated that the Petitioner was filing a combined motion to reopen and a motion to reconsider, we treated the filing as a motion to reopen because the Petitioner did not make any claims regarding reconsideration and because he provided a supporting statement that referenced a "motion to reopen" and requested "the reopening of the case."

[2] The record shows that the Petitioner filed the first NIW petition (with receipt number [redacted]) in October 2018. That petition was denied in July 2020 and no appeal was filed. The instant petition (with receipt number [redacted]) was then filed in January 2021, and a third petition (with receipt number [redacted]) was filed in July 2023.

concerning the petition being adjudicated in this matter.[3] In dismissing Petitioner's motion to reopen in our July 2024 decision, we concluded that the Petitioner had not provided new facts to establish that we erred in dismissing the appeal and subsequent combined motion to reopen and reconsider.

On current motion, the Petitioner makes an ambiguous reference to his preceding filing as "an appeal motion combined motion to reopen and reconsider"; he also refers to an RFE that was issued with respect to a separate petition. Given these anomalies, it is unclear whether the Petitioner has properly reviewed the record and fully understands the specific matter that is currently before us.

Regardless, we will address the Petitioner's combined motion to reopen and reconsider, starting first with the motion to reopen, which 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).

Applying the regulatory provisions stated above, the matter we are reviewing in this proceeding is our July 2024 decision in which we dismissed the Petitioner's motion to reopen. On current motion, however, the Petitioner does not state new facts or offer new evidence. In fact, the "Petitioner requests that [we] the Administrative Appeals Office (AAO) reconsider the adverse decision and approve Form I-140, Immigrant Petition for Alien Worker, previously denied by USCIS." Based on this specific request, it does not appear that the Petitioner seeks to introduce new facts or submit new evidence pertaining to our July 2024 decision dismissing the motion to reopen; rather, it appears that the Petitioner seeks further adjudication of the Director's denial of the petition. However, as stated above, 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). Further, the purpose of a motion to reopen is to bring forth new facts or evidence that pertains to our latest decision dismissing the motion to reopen. Because the Petitioner has not provided new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision.

Next, we will consider the Petitioner's motion to reconsider, which 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). As stated above, 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).

In our prior decision, we determined that the Petitioner did not articulate how we erred in finding that the record did not demonstrate the national importance of the proposed endeavor. We pointed to the lack of sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to the Petitioner's specific proposed endeavor. And we highlighted that in our first motion decision we reviewed and discussed the Petitioner's previously submitted documentation.

[3] The record shows that we dismissed the Petitioner's appeal in a June 2023 decision, and in December 2023 we also dismissed the Petitioner's first motion – a motion to reopen and reconsider – which was followed by a second motion, one that we dismissed in the July 2024 decision that is the subject of the current motion.

The Petitioner's contentions in the current motion merely reargue facts and issues concerning the proposed endeavor's claimed national importance, which we had 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"). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit, and we will not re-adjudicate the petition anew. The Petitioner does not 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. Therefore, the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.