U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38947870

Date: NOV. 7, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a pilot, 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 EB-2 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 that the Petitioner did not establish that a waiver of the job offer requirement is in the national interest. We dismissed a subsequent appeal. The matter is now before us on motion to reopen.

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 reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

On motion, the Petitioner submits a copy of a receipt notice for a new Form I-140, Immigrant Petition for Alien Worker, to demonstrate that he has submitted a new national interest waiver petition that is currently pending. The Petitioner asserts that this "constitutes significant new evidence that directly affects [the Petitioner's] eligibility for immigration relief" and that it "significantly alters his immigration circumstances, as its approval could render him eligible for adjustment of status or other immigration benefits."

The Petitioner has not stated new facts, supported by documentary evidence, that establish proper cause to reopen the proceedings. *See* 8 C.F.R. § 103.5(a)(1)(i); (a)(2). In our decision to dismiss the Petitioner's appeal, we adopted and affirmed SCOPS' finding that the Petitioner did not establish eligibility under the first prong of the *Dhanasar* analytical framework. The fact of the Petitioner's

submission of a new national interest waiver petition is not material to this finding, and the Petitioner does not explain how it would be material, or how it would establish cause to reopen the proceeding.

Regardless of whether the Petitioner's submission of a new petition may "affect [his] eligibility for immigration relief" or "render him eligible for adjustment of status," this fact has no bearing on whether the appeal of the denial of the instant petition should be reopened. A petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1). The subsequent filing of a new petition, a circumstance which arose after the filing of the instant petition, does not help establish the Petitioner's eligibility at the time the instant petition was filed.

Although the Petitioner has submitted additional evidence with the motion to reopen, the Petitioner has not established eligibility. Because the Petitioner has not provided new facts to establish that we erred in dismissing the appeal or that would otherwise warrant reopening of the proceeding, we have no basis to reopen our prior decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

NOTICE: Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.