U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34923221

Date: NOV. 18, 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 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).

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not establish her eligibility for the requested national interest waiver under the three-prong framework set forth in our precedent decision, *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). We dismissed the Petitioner's appeal of that decision and have dismissed six subsequent combined motions to reopen and reconsider. The matter is now before us again on combined motions 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). By regulation, our review is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). We must dismiss any motion that does not satisfy the relevant motion requirements. 8 C.F.R. § 103.5(a)(4). Upon review, we will dismiss the Petitioner's motions.

I. MOTION TO REOPEN

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes within the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute the submission of "new facts."

On motion, the Petitioner submits a brief, a copy of our prior decision dismissing her motions, and a supplemental statement. In her statement, she reiterates her experience as a finance manager and the benefits she claims her endeavor will provide to U.S. companies and the economy.[1] While the Petitioner's supplemental statement is itself new to the record, the Petitioner has not provided new

[1] We are not unsympathetic to the family and medical concerns the Petitioner raises in her brief, but they do not bear upon the legal issues we must consider today.

facts to establish that we erred in dismissing the prior motion. As noted 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). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, the motion will be dismissed.

II. MOTION TO RECONSIDER

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 purpose of a motion to reconsider is to show error in the most recent prior decision, not to re-adjudicate the petition anew. *See, e.g.*, *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit, in essence, the same brief and seek reconsideration by generally alleging error in the prior decision). A motion to reconsider also cannot be used to raise a legal argument that could have been raised earlier in the proceedings. *Id.*

On motion, the Petitioner does not contend that our last decision was based on an incorrect application of law or policy or that our decision was incorrect based on the record at the time of that decision.[2] Rather, she continues to assert her eligibility for a national interest waiver and alleges errors in the Director's denial of her underlying petition, as well as her subsequent appeal. However, these are not the decisions before us today. As previously stated, a motion's scope is limited to "the prior decision" and "the latest decision in the proceeding," which, in this case, is her last combined motion to reopen and reconsider. 8 C.F.R. § 103.5(a)(1)(i), (ii). As the Petitioner has not argued, much less established, that our prior decision was based on an incorrect application of law or policy at the time we issued our decision, the motion to reconsider must be dismissed.

III. CONCLUSION

The Petitioner has not shown proper cause for reopening or reconsidering our prior decision. Therefore, the motions will be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

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[2] The motion states "[t]he Petitioner claims the correctness of AAO's prior decision" and goes on to argue that "the Service" violated the Fifth Amendment of the U.S. Constitution by "not properly analyz[ing] the record." The Petitioner does not specify whether, by "the Service," she refers to the Director's decision or to our prior decision. Regardless, the Petitioner identifies no due process rights implicated in her petition's adjudication. *See Lyng v. Payne*, 476 U.S. 926, 942 (1986) (stating that "[w]e have never held that applicants for benefits . . . have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment."); *see also Azizi v. Thornburgh*, 908 F.2d 1130, 1134 (2d Cir. 1990) (explaining that the Fifth Amendment protects against the deprivation of property rights without due process granted to noncitizens, however, petitioners do not have an inherent property right in an immigrant visa). The Petitioner does not identify a law or policy that we may have incorrectly applied. 8 C.F.R. § 103.5(a)(3).