U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34206985

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 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 qualifies for EB-2 classification, but that he had not established eligibility for a national interest waiver. We dismissed the subsequent appeal and motion. The matter is now before us 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). 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).

Here, the Petitioner asserts their prior motion was denied due to "ineffective assistance from [the Petitioner's] former alleged counsel." The Petitioner asserts that these new facts establish eligibility, as "[i]t is possible to reopen based upon ineffective assistance that was not provided by an attorney." It appears that the Petitioner entered into a contract agreement with an immigration assistance company for the response to the request for evidence on the initial petition, the appeal, and the previous motion to reconsider.

Although the Petitioner states he received ineffective assistance on his case, he has not complied with the requirements described in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), or established that their former attorney's assistance was so deficient they were prejudiced by the performance. *See Matter of*

Melgar, 28 I&N Dec. 169, 171 (BIA 2020). Specifically, a motion alleging ineffective assistance of counsel must:

- Include a noncitizen's affidavit detailing their agreement with the allegedly ineffective counsel regarding actions to be taken and any representations by counsel;
- Demonstrate that the noncitizen informed counsel of the ineffectiveness allegations and provided an opportunity to respond; and
- Indicate whether a complaint was filed with appropriate disciplinary authorities regarding any violation of ethical or legal responsibilities, and if not, why not.

Matter of Lozada, 19 I&N Dec. at 639.

The record does not show the Petitioner has taken any of the above steps and therefore, we cannot determine that he has, in fact, received ineffective assistance in his prior motion to reconsider.

Aside from the Petitioner's assertion of ineffective assistance and submitting the contracts for consulting services, the Petitioner does not identify a new fact, nor does he submit documentary evidence of such a fact in support of the motion to reopen. Therefore, it does not satisfy the requirements of a motion to reopen under 8 C.F.R. § 103.5(a)(2) and the motion to reopen will be dismissed. 8 C.F.R. § 103.5(a)(4).

Next, 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). 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.

On motion, the Petitioner asserts his "[p]roposed endeavor and [the Petitioner's] work experience align with the criteria established in the *Matter of Dhanasar*. As such, the prior conclusion was not in accordance with the law and policy." The Petitioner asks for reconsideration of the decision but does not specifically identify on motion, how we may have incorrectly applied law or policy in our prior decision. *See* 8 C.F.R. § 103.5(a)(1)(ii) (limiting the scope of a motion to the latest decision). For example, the Petitioner states that the proposed endeavor "contributes significantly to the social, physical, and mental well-being of the youth." He also asserts that his proposed endeavor will create direct and indirect job opportunities. We previously addressed this assertion, reviewed the record, and determined the Petitioner's proposed endeavor did not rise to the level of national importance.

The Petitioner does not identify any specific error of law or fact nor does the Petitioner assert that our prior decision did not follow the regulations and policy guidance. Therefore, the Petitioner has not established proper grounds for reconsideration. The Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; the motion must demonstrate how we erred as a matter of law or policy. *See 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). The Petitioner bears the burden to demonstrate eligibility or, in this case, the applicability of the law or policy he asserts we incorrectly applied in the latest decision. 8 C.F.R. § 103.5(a)(3); *see also* 8 C.F.R. § 103.5(a)(1)(ii);

Matter of Chawathe, 25 I&N Dec. at 375-76. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. In addition, the Petitioner's contentions in the current motion to reconsider merely reargue facts and issues we have already considered in our previous decisions. *See e.g., Matter of O-S-G-*, 24 I&N Dec. at 58 (. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied and the motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.