U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35262127

Date: NOV. 26, 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 Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We summarily dismissed his appeal because the Petitioner did not submit a timely brief or additional evidence specifying any erroneous conclusion of law or statement of fact in the Director's decision. We subsequently dismissed two combined motions to reopen and reconsider. The matter is now before us on combined motions to reopen and reconsider for the third time.

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). 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). 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 the 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).

In our prior decisions, we explained that the Petitioner's appeal was not accompanied by a brief and/or additional evidence, nor was it submitted to the Administrative Appeals Office (AAO) within 30 calendar days of filling the appeal. We acknowledged the Petitioner's contention in his first motion that he mailed his brief and additional evidence; however, we stated that he had incorrectly sent the brief in support of his appeal to the U.S. Citizenship and Immigration Services (USCIS) Phoenix

Lockbox and not the AAO, as required. As such, we concluded that the Petitioner had not overcome our summary dismissal of his appeal and dismissed his combined motions to reopen and reconsider.[1]

With the instant motions, the Petitioner provides a brief and evidence, again asserting he meets the requirements for his requested classification, but not acknowledging our prior decision, or contending that it was erroneous. 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. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion to reopen. Consequently, his motion to reopen will be dismissed.

The Petitioner's brief in his current motion only addresses his claimed eligibility for a national interest waiver and does not address the basis for our prior decision. The Petitioner's brief does not establish that our prior decision was based on an incorrect application of law or policy and was incorrect based on the evidence in the record of proceedings at the time of the decision. Consequently, the Petitioner's motion to reconsider will be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[1] In our decision on the Petitioner's first motions, we further noted that a careful review of the brief was conducted and concluded that it generally reiterated the benefits of the Petitioner's profession, his qualifications, and the claimed economic impacts of his proposed business but did not provide any new evidence or arguments which overcame the Director's determination. We also noted that the supplemental brief did not identify specifically any erroneous conclusion or statement of fact in the Director's decision and did not specifically address the reasons for the denial of his petition as outlined in the Director's decision. *See* 8 C.F.R. § 103.3(a)(1)(v).