U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39579317

Date: OCT. 02, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a soccer program manager and coordinator, seeks second preference immigrant classification (EB-2) 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 immigrant 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, a motion to reconsider, and three combined motions to reopen and reconsider. On the second motion, the Petitioner retained a new attorney and raised a claim of ineffective assistance of counsel, but we concluded that the Petitioner has not met the documentary requirements outlined in *Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988). On the third motion, we concluded that in addition to not meeting the *Lozada* requirements, the Petitioner has not demonstrated that he is prejudiced by the prior counsel's actions. *See Matter of Melgar*, 28 I&N Dec. 169, 171 (BIA 2020) (explaining that in addition to *Lozada*'s requirements, applicants must show that they were prejudiced by the attorney's errors). We reiterated similar findings in response to the Petitioner's fourth motion to reopen and reconsider. The matter is now before us on a fifth 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.

I. LAW

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). 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). 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.

II. ANALYSIS

A. Motion to Reopen

On motion to reopen, the Petitioner submits another affidavit repeating his claim of ineffective assistance of counsel from prior motions: that the paralegal who initially assisted the Petitioner with the national interest waiver disappeared and that he did not receive competent representation from the immigration services company[1] that he subsequently hired to file a response to SCOPS' request for evidence (RFE). The Petitioner's affidavit reiterates that the RFE response prepared by his previous representatives was "generic, incomplete and legally inadequate"[2] and that important documents were missing from the filings. The Petitioner also resubmits the same three copies of "Contract for Consulting Services," but these documents, already on record, do not offer any new facts.[3] In claiming ineffective assistance of counsel, the Petitioner has not met the requirements of a motion to reopen as he has not provided any new facts that warrant reopening of the proceedings.

The Petitioner also resubmits his 2021 business plan, along with studies on obesity in youths and articles on growing popularity of soccer in the United States. With these documents, the Petitioner appears to reassert economic and health benefits of his proposed endeavor as a soccer program manager. However, the Petitioner has already claimed these facts in the petition and subsequent appeal and motions. Therefore, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. We have no basis to reopen our prior decision as the evidence on motion does not change the outcome of the Petitioner's eligibility for a national interest waiver or claim of ineffective assistance of counsel. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

B. Motion to Reconsider

On motion to reconsider, the Petitioner asserts that there was "a misapplication of *Matter of Lozada*" and our prior decision failed to recognize "the discretionary exception outlined in *Matter of Assaad*."

However, the Petitioner misquotes from *Matter of Assaad*, 23 I&N Dec. 553 (BIA 2003) and misidentifies the conclusion reached by the Board of Immigration Appeals (the Board) in *Assaad*. The Petitioner claims that the Board in *Assaad* affirmed "that strict Lozada compliance may be excused where a petition has made a credible effort to explain the deficiency and presented a motion that otherwise demonstrates merit." However, the Board did not make such findings in *Assaad*; instead, it held that the respondent substantially complied with *Lozada* but did not show that he was prejudiced by his prior counsel's decision to not appeal the case. *Id.* at 561. The Board found that the immigration judge correctly ordered removal after the respondent failed to meet his burden of showing that he had contracted a valid marriage or that he was eligible for any other relief from removal. *Id.* at 562. Therefore, the Petitioner's claim that our prior decision misapplied *Matter of Lozada* is without merit

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[1] The Petitioner claims that this company is "a non-attorney-owned business that falsely presented itself as a professional legal organization."

[2] In the previous motion, the Petitioner similarly characterized the prior representation as "generic and impersonal" and lacking in "tailored legal strategy."

[3] In these contracts, the company disclosed that it is "owned by nonlawyers" and included a disclaimer that it does not make any guarantees regarding case outcomes.

and not supported by *Matter of Assaad*. Also, contrary to the Petitioner's claims, our prior decision did not require "strict" *Lozada* compliance but consistently described *Lozada*'s compliance to be "substantial."

The Petitioner also asserts that our prior decision did not "evaluate whether the Petitioner suffered prejudice due to ineffective assistance" under *Matter of Coelho*. Although our prior decision, responding to the Petitioner's fourth motion, only discussed the Petitioner's failure to substantially comply with the *Lozada*'s documentary requirements, we have previously concluded in response to the Petitioner's third motion, that the Petitioner has not shown prejudice from the prior counsel's conduct, citing to *Dakane v. U.S. Att'y Gen.*, 399 F.3d 1269, 1274 (11th Cir. 2005) (holding that "[p]rejudice exists when the performance of counsel is so inadequate that there is a reasonable probability that but for the attorney's error, the outcome of the proceedings would have been different).

The Petitioner still has not demonstrated that his case was prejudiced by the former representatives' actions. Aside from the general claims regarding boilerplate language, missing documents, and generic legal arguments, the Petitioner has not specifically shown the deficiencies in the representation that prejudiced his case and how his eligibility for the national interest waiver was harmed. The Petitioner contends that the prior representatives failed to explain how his business model advanced U.S. national interests and did not include "critical evidence such as expert letters, data on underserved youth populations." However, the record demonstrates that the Petitioner's former representatives submitted his 2021 business plan, expert opinion letters, and claims of health and economic benefits of youth sports and physical fitness. The same documents and claims have been considered and found to be insufficient in demonstrating the Petitioner's eligibility for the national interest waiver.

A motion to reconsider is not a process by which a party may submit, in essence, the same brief previously presented and seek reconsideration by generally alleging error in the prior decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). The Petitioner makes the same general claims that he suffered prejudice or harm from the misconduct of his former representatives but has not sufficiently shown that the outcome of his case would be different. Therefore, we will not re-adjudicate the petition anew and the underlying petition remains denied.

III. CONCLUSION

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. 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 and that he was prejudiced by his former representatives' actions. Therefore, the motion 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.

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.