U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34654900

Date: OCT. 7, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an industrial automation developer, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse a job offer - and thus a related requirement for certification from the U.S. Department of Labor (DOL) - if a petitioner demonstrates that a waiver of these U.S.-worker protections would be "in the national interest." *Id.*

The Director of the Texas Service Center denied the petition. We dismissed the Petitioner's following appeal and motion to reconsider. *See In Re: 31629533* (AAO June 26, 2024). Our appellate decision affirmed the Director's finding of insufficient evidence regarding the Petitioner's eligibility for EB-2 classification and reserved opinion on the merits of his requested national interest waiver. *Id.* Our most recent decision dismissed the Petitioner's motion to reconsider because it did not demonstrate or assert our misapplication of law or policy. *Id.* We again reserved opinion on his requested waiver. *Id.*

The matter returns to us on the Petitioner's combined motions to reopen and reconsider. He bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we conclude that, contrary to regulations, his motion to reopen does not state "new facts" and neither motion addresses our latest decision's dismissal ground. We will therefore dismiss the motions.

I. LAW

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must establish that, based on the evidence at the time of the decision, our latest opinion misapplied law or policy. 8 C.F.R. § 103.5(a)(3). On motion, the scope of our review is limited to our latest decision. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that meet these requirements and demonstrate eligibility for the requested benefit.

II. ANALYSIS

A. Motion to Reopen

The Petitioner submits copies of: his passport pages; an expert opinion letter; an evaluation of his foreign educational credentials; letters of recommendation and from former employers; information and pictures of projects he has completed; and information about his business. But he previously submitted this evidence. Thus, contrary to 8 C.F.R. § 103.5(a)(2), these materials do not state "new facts."

The Petitioner's motion to reopen does not state new facts. We must therefore dismiss the filing. *See* 8 C.F.R. § 103.5(a)(4) ("A motion that does not meet applicable requirements shall be dismissed.")

B. Motion to Reconsider

As previously indicated, the scope of our review on motion is limited to "the prior decision" or "the latest decision in the proceedings." 8 C.F.R. § 103.5(a)(1)(i), (ii). We dismissed the Petitioner's prior motion to reconsider, finding that, contrary to 8 C.F.R. § 103.5(a)(3), the filing did not demonstrate or assert our misapplication of law or policy. *See Matter of O-S-G-*, 24 I&N Dec. 56, 60 (BIA 2006) ("[A] motion to reconsider must include specific allegations as to how the [agency] erred as a matter of fact or law in its [latest] decision."); *see also Da Conceicao v. U.S. Att'y Gen.*, No. 20-14482, 2022 WL 58558, *6 (11th Cir. Jan. 6, 2022) ("[A] motion to reconsider challenges the correctness of the [latest] decision.")

The Petitioner's combined motions to reopen and reconsider do not challenge, or even address, our prior decision's dismissal ground. Rather, the combined motions contain a nearly verbatim copy of prior counsel's written brief, which we received before our last decision.

The Petitioner's combined motions address issues omitted from our latest decision and thus exceed our scope of review. We must therefore dismiss the filings. *See* 8 C.F.R. § 103.5(a)(4).

Our findings resolve the Petitioner's combined motions. The appeal remains dismissed for insufficient evidence of his eligibility for EB-2 classification. We therefore need not consider and hereby continue to reserve opinion on the merits of his requested national interest waiver. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner's motion to reopen does not state new facts. And both his combined motions to reopen and reconsider exceed our scope of review.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.