U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34099434

Date: OCT. 10, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks second preference 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 did not establish that they were a member of the professions the evidence in the record did not support a waiver of the required job offer, and thus of a labor certification, would be in the national interest. We dismissed a subsequent appeal. 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 combined motions.

I. LAW

A motion to reopen is based on new facts that are supported by documentary evidence, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3).

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 "new facts." A motion to reopen that does not satisfy the applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

A motion to reconsider on the other hand must: (1) state the reasons for reconsideration, (2) be supported by any pertinent precedent decision to establish that the decision was based on an incorrect

application of law or policy, and (3) establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider that does not satisfy these requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

The review of a motion is limited to the basis for the prior adverse decision. The regulations at 8 C.F.R. § 103.5(a)(1)(i) generally require that the decision a motion seeks to reopen or reconsider must have taken place within the prior 30 days. So we follow the regulations as written and limit our review to the prior decision made within 30 days of filing the motion. We evaluate any new facts, arguments, or allegations of error in the application of law or service policy in connection with our decision upon which the current motion was filed. We may only grant a motion that satisfies these requirements and demonstrates eligibility for the benefit sought.

II. ANALYSIS

A. Motion to Reopen

The Petitioner has not provided us with new facts warranting reopening the proceedings here. 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. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute submission of "new facts." A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). *See also Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification under section 203(b)(2)(B)(i) of the Act and then establish that they merit discretionary waiver of the job requirement "in the national interest." *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). The Director concluded the Petitioner possessed an advanced degree but was not a member of the professions and therefore was categorically ineligible for EB-2 permanent employment-based immigrant classification. The Director further concluded the Petitioner did not demonstrate eligibility for a waiver of the job offer requirement, and thus of a labor certification, upon application of the *Dhanasar* analytical framework. We dismissed the Petitioner's appeal because their appeal did not address the Director's conclusion that they were not a member of the professions in possession of an advanced degree. And further, we concluded that the Petitioner's proposed endeavor was not nationally important because they did not adequately describe its broader implications.

The only "new fact" the Petitioner submitted on motion is the State of Florida's initiative to train and retain healthcare workers evidenced by a CBS News article from March 21, 2024.[1] But, the State of Florida's initiative does not absolve the Petitioner of the requirement to address all issues on appeal with specificity. When dismissing an appeal, the AAO does not address issues that were not raised with specificity on appeal. Issues or claims that are not raised on appeal are deemed to be "waived."

[1] On motion, the Petitioner resubmits the evidence and documentation in support of their initial petition and responses to the Director's request for evidence (RFE) and notice of intent to deny (ITD). Repeating prior assertions of eligibility and resubmitting evidence previously considered on de novo appeal are not new facts with the potential to change the outcome of the matter.

See, e.g., Matter of M-A-S-, 24 I&N Dec. 762, 767 n.2 (BIA 2009). The courts' view of issue waiver varies from circuit to circuit. *See Rizk v. Holder*, 629 F.3d 1083, 1091 n.3 (9th Cir. 2011) (finding that issues not raised in a brief are deemed waived); *Martinez-Serrano v. INS*, 94 F.3d 1256,1259 (9th Cir. 1996) (finding that an issue referred to in an affected party's statement of the case but not discussed in the body of the brief is deemed waived). The Petitioner's exclusion of any assertion or contention in their appeal to rebut the Director's conclusion that they were not a professional in possession of an advanced degree is not cured by the State of Florida's initiative to train and retain healthcare workers. Additionally, the Petitioner simply resubmits their prior assertions and evidence to contend that they are eligible for a discretionary waiver of the requirement of a job offer, and thus a labor certification, upon application of the *Dhanasar* analytical framework. They present no new facts supported by evidence that could have the potential to change the outcome of this matter. So, there is no factual or legal basis for us to consider reopening the matter before us.

B. Motion to Reconsider

A motion to reconsider must state the reasons for reconsideration and that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). The Board of Immigration Appeals generally requires that a motion to reconsider assert an error was made at the time of the previous decision. The very nature of a motion to reconsider is the claim that the original decision was defective in some regard. *See Matter of O-S-G-*, 24 I&N Dec. 56, 57 (BIA 2006).

A motion to reconsider must: (1) state the reasons for reconsideration; (2) be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy; and (3) establish that the decision was incorrect based on the evidence in the record at the time of the decision.

The Petitioner's motion simply repeats and restates the arguments and documents they aver support the national importance of their endeavor that were introduced earlier in these proceedings. Moreover, the Petitioner asserts no legal error in our conclusion that they waived the issue of their eligibility for categorical classification as an employment based second preference permanent immigrant. They have not supported their stated reasons with any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy. And they have not established that the decision was incorrect based on the evidence in the record at the time of the decision. The Petitioner's motion essentially expresses their disagreement with our conclusions. But merely disagreeing with our conclusions without showing that we erred as a matter of law is not a ground to reconsider our decision. *See O-S-G-*, 24 I&N Dec. at 58. The Petitioner has not demonstrated how we erred in our previous decision on the Petitioner's appeal. Consequently, it does not meet the requirements for a motion to reconsider and does not overcome the reasons for our previous decision. So, the Petitioner has not shown proper cause for reconsidering our decision on its previous motion.

III. CONCLUSION

The Petitioner should note that the filing of a motion to reopen or reconsider does not provide any interim benefits such as staying the execution of any decision or extending a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv). The Petitioner has not demonstrated that we should either reopen

the proceedings or reconsider our decision. Therefore, the combined 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.