U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34781229

Date: OCT. 25, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a nutritionist and entrepreneur, 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 Nebraska Service Center denied the petition, concluding the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, but did not establish that a waiver of the required job offer, and thus of the 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). By regulation, our review is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). We must dismiss any motion that does not satisfy the relevant motion requirements. 8 C.F.R. § 103.5(a)(4). Upon review, we will dismiss the Petitioner's motions.

I. MOTION TO REOPEN

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 the submission of "new facts."

On motion, the Petitioner submits a brief and a copy of our prior decision dismissing her appeal. The Petitioner's motion to reopen does not state new facts and does not include any new documentary evidence. *See* 8 C.F.R. 103.5(a)(2). Because the motion does not meet the applicable regulatory requirements, we must dismiss it. *See* 8 C.F.R. 103.5(a)(4).

II. MOTION TO RECONSIDER

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).

On motion, the Petitioner requests reconsideration based on "USCIS's clear misunderstanding of the critical elements surrounding the Petitioner's proposed endeavor as a nutritionist and entrepreneur and the significant contributions her work is projected to make within the health and nutrition sector and beyond, particularly in addressing obesity and promoting wellness." However, beyond this vague assertion, she does not explain what "critical elements" we misunderstood in our prior decision or otherwise specifically articulate how we predicated our decision on an incorrect application of law or policy based on the evidence in the record. Instead, she essentially reargues her eligibility for a national interest waiver. Merely expressing disagreement with an adverse decision is not sufficient to meet the requirements of a motion to reconsider under 8 C.F.R. § 103.5(a)(3). *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (providing 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). Rather, the moving party must demonstrate that the immediate prior decision was based on an incorrect application of law or USCIS policy. Since the brief does not meet these requirements, we must also dismiss the Petitioner's motion to reconsider.

III. CONCLUSION

The motion to reopen does not comply with the applicable regulatory requirements. Further, the motion to reconsider does not demonstrate that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Consequently, we have no basis for reopening or reconsideration of our prior decision. Therefore, the motions will be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.