U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34797739

Date: OCT. 28, 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 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 Texas Service Center denied the petition, concluding that the Petitioner did not establish eligibility for the underlying EB-2 immigrant classification or the requested national interest waiver. We dismissed a subsequent appeal. The matter is now before us on motion to 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.

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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

In our appellate decision, we adopted and affirmed the Director's decision relating to the Petitioner's eligibility for the underlying immigrant classification. We concluded that, because the Petitioner did not contest the Director's determination regarding her eligibility as an advanced degree professional, we considered that issue waived.[1] And we acknowledged the Petitioner's claims on appeal that she was eligible for EB-2 immigrant classification as an individual of exceptional ability, but determined that she did not previously claim eligibility as an individual of exceptional ability before the Director. Specifically, in the initial filing of the petition, the Petitioner claimed that she was "eligible for EB-2 classification as a member of the professions holding an advanced degree," and in response to the Director's request for evidence (RFE), she further maintained her eligibility for EB-2 classification as an advanced degree professional based on her education and professional experience. And, while we acknowledged that in her RFE response, the Petitioner also asserted, without explanation, that because USCIS did not request evidence relating to the regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii), USCIS

[1] An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

recognized that she satisfied at least three of the six criteria, we agreed with the Director that this assertion was not supported by the record, nor did the Petitioner claim to satisfy any of the evidentiary criteria before the Director. Accordingly, we determined that we would not consider Petitioner's claims to meet five of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii) for the first time on appeal. We also we reserved her appellate arguments regarding eligibility for a national interest waiver.[2]

On motion, the Petitioner asserts our determination that she did not claim eligibility for EB-2 immigrant classification as an individual of exceptional ability prior to filing her appeal is incorrect, but she does not provide support for this claim, or otherwise indicate when she claimed eligibility before the Director. Instead, the Petitioner generally relies on the same claims previously put forth in her appeal, asserting that the evidence submitted before the Director satisfies at least five of the six evidentiary criteria at 8 C.F.R. § 204.5(k)(3).

In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Commensurate with that burden is responsibility for explaining the significance of the proffered evidence. *Repaka v. Beers*, 993 F. Supp. 2d 1214, 1219 (S.D. Cal. 2014). Filing parties should not submit large quantities of evidence without notifying the adjudicating body of the specific documentation that corroborates their claims, as doing so places an undue burden on the Director to search through the documentation without the aid of the filing party's knowledge. *Toquero v. INS*, 956 F.2d 193, 196 n.4 (9th Cir. 1992). Here, the Petitioner has not shown that she previously claimed eligibility for EB-2 immigrant classification as an individual of exceptional ability and, consequently, that we erred in dismissing her appeal.

Because the Petitioner has not demonstrated how we erred as a matter of law or policy, her motion does not 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) (confirming that a person cannot satisfy the requirements of a motion to reconsider by generally alleging error in the prior decision, rather the filing party "must specify the factual and legal issues" that were decided in error). Consequently, we have no basis for reconsideration of our decision, and the Petitioner's motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).