U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39339186

Date: OCT. 28, 2025

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 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).

Service Center Operations (SCOPS) denied the underlying petition and the following combined motion to reopen and reconsider; concluding that the Petitioner 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 the Petitioner's appeal and two subsequent combined motions to reopen and reconsider. The matter is now before us on a third combined 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.

As noted above, SCOPS determined that the Petitioner did not establish eligibility for a national interest waiver. In our decision dismissing the appeal, we agreed with SCOPS' decision, concluding that the Petitioner did not demonstrate the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework. We dismissed the Petitioner's subsequent two combined motions to reopen and reconsider as they did not meet the applicable requirements. 8 C.F.R. § 103.5(a)(4). We incorporate our prior decisions by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on this combined motion.

In our dismissal of the immediate prior motion to reopen, dated April 2025, we determined that the Petitioner did not offer new evidence or facts to overcome the stated grounds for dismissal of the prior motion, dated December 2024, and therefore the motion to reopen was dismissed. Further, we concluded that the Petitioner did not establish that the December 2024 dismissal was based on an incorrect application of law or policy at the time we issued the decision, and therefore the Petitioner's motion to reconsider was dismissed.

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). Therefore, in the instant motion, we review the Petitioner's brief as it relates to our April 2025 decision. Upon review, we determine that the Petitioner does not provide new evidence or facts to overcome the grounds of dismissal, and the Petitioner does not establish that the dismissal was based on an incorrect application of law or policy at the time we issued the decision. Therefore, we will dismiss both motions.

A. 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). 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

On motion, the Petitioner submits new evidence and asserts that she is eligible for a national interest waiver. Although the Petitioner contends that this new evidence establishes her eligibility; it does not overcome our April 2025 dismissal. For example, the Petitioner contends that her leadership reduced a judicial backlog in [redacted] Brazil by 35% and submits an article on the impact of alternative dispute resolution in Brazil. She states that this evidence supports the national importance of her proposed endeavor under *Dhanasar's* first prong. However, the Petitioner's eligibility under *Dhanasar's* first prong was addressed in our prior decisions and this new evidence does not address the deficiencies presented in our April 2025 decision. Therefore, this evidence does not meet the requirements of a motion to reopen. 8 C.F.R. § 103.5(a)(2).

Further, the Petitioner submits evidence that she registered her company with SAM.gov in August 2022, and evidence that she submitted policy proposals to USCIS in December 2021. Here too, this evidence does not address the deficiencies discussed in our April 2025 dismissal.[1] In addition, the evidence does not further establish her eligibility at the time of filing. As we noted previously, on motion a petitioner must still establish eligibility at the time of filing; a petition cannot be approved at a future date after a petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). We generally do not "consider facts that come into being only subsequent to the filing of a petition." *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998) (citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981)). Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for

[1] The Petitioner submits additional evidence that does not overcome our April 2025 decision. She submits evidence of new I-485 denials and states that these denials are "blocking her licensure" but does not discuss how this relates to our April 2025 decision. In addition, she asserts that administrative errors by USCIS prejudiced her case. For example, she asserts that her birth date is incorrect in our system; however, the screenshot in the record does not establish how this is an error in our April 2025 decision. She further asserts that we issued a receipt notice on the previous combined motion that showed her motion was untimely filed. We note that our previous decision was written on the merits of the case; not dismissed as an untimely filing. The Petitioner also asserts that she has two A-numbers and this prejudices her case; however, she has not provided evidence to establish how her case has been prejudiced or how this relates to our April 2025 decision. As stated above, these facts do not overcome our April 2025 decision and therefore do not establish the requirements for a motion to reopen. 8 C.F.R. § 103.5(a)(2).

approval as of the date it was filed. *Ogundipe v. Mukasey,* 541 F.3d 257, 261 (4th Cir. 2008). Therefore, this too does not meet the requirements of a motion to reopen. 8 C.F.R. § 103.5(a)(2).

The Petitioner asserts that she submitted a civil rights complaint with Department of Homeland Security (DHS) Office Civil Rights and Civil Liberties (CRCL) regarding "translation mischaracterization," which she contends, supports her eligibility for *Dhanasar's* second prong. The Petitioner submitted translations of foreign language documents with her underlying petition using Google Translate. SCOPS did not consider this evidence as it did not meet the requirements for the translation of foreign language documents. 8 C.F.R. § 103.2(b)(3). Although the Petitioner submits new evidence, this is not a new fact. Our April 2025 decision addressed this evidence, explaining that "we cannot consider new objections to the earlier denial of the petition or the Petitioner's appeal of it, and the Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding." Furthermore, even if we were to accept translation of these documents, as the Petitioner states, they relate to *Dhanasar's* second prong. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). We dismissed the Petitioner's appeal based on *Dhanasar's* first prong and therefore claims in support of the Petitioner's eligibility for the second prong do not overcome our previous decisions. Therefore, this is not a new fact, supported by evidence, that overcomes our April 2025 decision. Because the current motion to reopen does not state new facts material to the basis for which we dismissed the our April 2025 decision, it does not satisfy the requirements of a motion to reopen. 8 C.F.R. § 103.5(a)(2). Therefore, we must dismiss the motion to reopen.

B. 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). 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.

On motion to reconsider, the Petitioner makes assertions regarding the correctness of the underlying decision and our prior decisions[2]. However, the Petitioner's assertions do not establish that we erred in the application of law or USCIS policy in our April 2025 decision. For example, the Petitioner asserts that we misapplied *Dhanasar* by requiring field-wide impact in order to meet the national importance element of *Dhanasar's* first prong. However, this statement does not address how we erred in in our April 2025 decision; but that the Petitioner generally disagrees with the underlying and appellate decision. As explained in our prior decision, the Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; instead, the motion must demonstrate how we erred as a matter of law or policy. *See Matter of O-S-G-*, 24 I&N Dec. at 58 (finding 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). Here, the

[2] We note, on motion to reconsider, the Petitioner discusses issues already detailed above such as her duplicate A-numbers, the use of Google Translate to translate foreign language documents, an incorrect date of birth, and the previous motion's receipt notice date. Here, these issues do not relate to the application of law or USCIS policy in our April 2025 decision and therefore do not establish we erred in our previous decision.

Petitioner has not established we erred in our prior decision, but generally disagrees with our prior decision, and therefore has not met the requirements of a motion to reconsider. 8 C.F.R. § 103.5(a)(3).

Further, the Petitioner contends that we erred in our decision to dismiss the changes she made to broaden the scope of her proposed endeavor. She states that her post-filing evidence was erroneously dismissed by the AAO and that *Dhanasar* "permits post-filing progress to show continuity;" however, the Petitioner has not provided evidence to support this assertion. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe,* 25 I&N Dec. at 376. We conclude that our April 2025 decision properly applied *Matter of Katigbak* to this issue. As previously addressed, on motion, a petitioner must still establish eligibility at the time of filing; a petition cannot be approved at a future date after a petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. We generally do not "consider facts that come into being only subsequent to the filing of a petition." *Matter of Izummi*, 22 I&N Dec. at 176 (citing *Matter of Bardouille,* 18 I&N Dec. at 114). Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey,* 541 F.3d 257 at 261. Here too, the Petitioner has not met the requirements of a motion to reconsider. 8 C.F.R. § 103.5(a)(3).

The Petitioner also asserts that we erred in dismissing her claim of ineffective assistance of counsel and states that we "ignored partial. . . compliance." Our April 2025 decision addressed the Petitioner's ineffective assistance of counsel claim. We concluded that the Petitioner had not complied with *Lozada* and that the Petitioner's ineffective assistance of counsel claim is related to the underlying petition and not our December 2024 decision. In the instant motion, the Petitioner has not established how we erred in our April 2025 decision as she has not complied with the requirements described in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), or established that her former attorney's assistance was so deficient they were prejudiced by the performance. *See Matter of Melgar*, 28 I&N Dec. 169, 171 (BIA 2020). Therefore, she has not met the requirements of a motion to reconsider. As stated above, 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). 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. 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.

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.