U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34045436

Date: OCT. 30, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, veterinary assistant, seeks second preference immigrant classification as an advanced degree professional and 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 record did not establish that the Petitioner was well-positioned to advance her endeavor or that, on balance, it would benefit the United States to waive the job offer requirement. We dismissed a subsequent appeal, affirming the Director's finding that the Petitioner was not well-positioned to advance the proposed endeavor, while withdrawing the Director's previous findings that the Petitioner was eligible for the EB-2 immigrant classification as an individual of exceptional ability and that the Petitioner's proposed endeavor was of national importance. The Petitioner then filed a combined motion to reopen and reconsider, which we summarily dismissed. We indicated that the Petitioner's brief did not directly address the conclusions from our prior decision and the Petitioner offered the same evidence already on record in support. The matter is now before us on a second combined motion to reopen and reconsider. Notably, our review on motion is limited to reviewing our latest decision, which is the decision to summarily dismiss the previous motions to reopen and reconsider. 8 C.F.R. § 103.5(a)(1)(ii).

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 both motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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). 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).

In her second motion, the Petitioner does not contest the summary dismissal of her first motion. She submits a brief and copies of evidence already in the record. She asserts that she acknowledges the summary dismissal of her previous motion because it did not specifically identify any erroneous conclusion of law or statement of fact in the previous decision. She now puts forward reasons for reconsideration. However, because the Petitioner has not established that our prior decision to summarily dismiss the appeal was incorrect based on the evidence in the record of proceedings at the time of the decision we will dismiss the motion to reconsider. 8 C.F.R. § 103.5(a)(4). Similarly, because the Petitioner has not presented new facts, her motion to reopen will be dismissed. *Id.*

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.