U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37236990

Date: SEP. 18, 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 petition, concluding that the Petitioner had not established eligibility for a national interest waiver. SCOPS denied the Petitioner's subsequent combined motions to reopen and reconsider, and 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 motion.

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). 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).

We are reviewing the denial of a Form I-140 NIW petition filed on August 22, 2022.[1]

[1] In addition to the Form I-140 NIW petition that is now before us, the Petitioner filed a second Form I-140 NIW petition [redacted] on October 13, 2022. SCOPS denied the second NIW petition on July 10, 2023. We dismissed a subsequent appeal [redacted] on February 15, 2024, and thereafter dismissed a combined motion [redacted] on September 16, 2024. The Petitioner also filed a third Form I-140 NIW petition [redacted] on September 19, 2023, and SCOPS denied it on August 4, 2025. He is also the subject of at least one other Form I-485 adjustment application [redacted], filed in July 2023 and still pending.

On motion, the Petitioner claims that the NIW petition should be reopened because he was subjected to ineffective assistance of counsel by an individual named I-B- who misrepresented herself to him as an attorney.[2] According to the Petitioner, he engaged the services of I-B- on December 29, 2021, and made a $1,500 payment to I-B- for her preparation and submission of his NIW petition and the concurrently filed Form I-485 adjustment of status application. The Petitioner submits pictures of various WhatsApp messages he exchanged with I-B- that appear to be from October and November of 2021.[3] The WhatsApp messages include, among other things, discussion of a filing fee, appear to document the Petitioner's payment of $1,500 to I-B- in November 2021, include a picture of a text receipt from I-B- titled "invoice EB2 [Petitioner's name]," reflect the Petitioner's query as to whether I-B- has ever had to refile, and contain her assurance that the Petitioner will not have to refile. He also submits a copy of a February 2023 e-mail discussion that included himself, I-B-, and a company that reviewed his curriculum vitae and biography in order to help him develop a business plan.

The Petitioner claims that I-B- "unilaterally decided to focus on '[redacted]' as the primary element" of the Petitioner's business plan after his NIW petition had already been filed, resulting in denial of his petition because a material change in the business plan requires the filing of a new NIW petition. 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to establish eligibility as of the filing date of a petition); *see also Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998) (a petitioner may not make material changes to a petition that has already been filed to make an apparently deficient petition conform to U.S. Citizenship and Immigration Services (USCIS) requirements). According to the Petitioner, "[i]f not for the inclusion and emphasis on '[redacted]' in the business plan. . . .[t]he original scope of the endeavor would have remained consistent, ensuring that the Petitioner's case could be properly reviewed for its national importance."

We acknowledge the WhatsApp messages and e-mail discussion that the Petitioner includes on motion and that he claims are evidence he was represented by I-B-. However, prior to these assertions on motion, the record lacked evidence that an individual named I-B- prepared or was involved in preparing the NIW petition that is before us on motion. Specifically, the NIW petition itself is not signed by a preparer or an attorney, and the Petitioner confirms on motion that I-B- did not sign a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. Instead, the Petitioner is the sole signatory to his NIW petition, and a mailing receipt in the record lists the Petitioner's residence as the mailing address for the NIW petition.

Moreover, although the Petitioner claims that we should reopen the matter on motion because he received ineffective assistance in the filing of the NIW petition that is now before us on motion and cites to *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), he has not shown that he has taken steps to comply with any of the three requirements described in *Matter of Lozada* against I-B-. *Id.* at 639.

Finally, although the Petitioner also claims that his NIW petition would have been properly reviewed for its national importance based on his original business plan if not for I-B-'s inclusion of [redacted]

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[2] We withhold names to protect the individuals' privacy.

[3] Although the Petitioner's administrative record shows that he already has claimed ineffective assistance of counsel by the law firm [redacted] it appears to relate to the preparation of an NIW petition on behalf of the Petitioner's wife. *See,* e.g., Form I-539, Application to Extend/Change Nonimmigrant Status ([redacted]) (claiming ineffective assistance of prior counsel in response to a request for evidence).

in the amended business plan, we did not dismiss the appeal (nor did SCOPS deny the NIW petition) based on such material change. Instead, both SCOPS and we declined to consider the amended business plan involving [redacted] and focused on the claims contained in the Petitioner's original plan before concluding that he had not established the proposed endeavor's national importance.

Aside from the Petitioner's assertion of ineffective assistance by I-B- and the new evidence in support of this claim, the Petitioner does not identify a new fact with respect to his underlying eligibility, nor does he submit documentary evidence of such a fact in support of the motion to reopen. Therefore, he has not established that his motion to reopen should be granted under 8 C.F.R. § 103.5(a)(2).

The Petitioner also has not established that the motion to reconsider should be granted. As stated, our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). On motion, the Petitioner asserts that the evidence he had provided establishes the national importance of the proposed endeavor and that our appellate decision incorrectly conflated two prongs under the framework for adjudicating NIW petitions, by concluding that the proposed endeavor does not have national importance (first prong) based on the balancing test that is reserved for the third prong. *Matter of Dhanasar*, 26 I&N 884 (AAO 2016). However, the language that the Petitioner references from our prior decision, i.e., "[t]he burden is on the Petitioner to establish why he should be exempt from the job offer and labor certification requirements," refers to the Petitioner's burden of proof in establishing *overall* eligibility for a national interest waiver and not for the third prong of *Dhanasar*. *See* 8 C.F.R. § 204.5(k)(4)(ii) (requiring NIW petitioners to establish that an exemption of a "job offer requirement, and thus a labor certification" would be in the national interest).

The Petitioner also asserts that his proposed endeavor aims to advance the development of software solutions that will benefit the United States by enhancing efficiency, improving productivity, and creating economic opportunities. However, we previously considered his general assertion that his "innovative IT solutions, although tailored to individual clients, have the potential to lead to widespread adoption and substantial economic impact," and ultimately concluded that this and other claims regarding economic impact and job creation, were unsupported by the record. Consequently, the Petitioner's assertions in the current motion to reconsider merely restate claims that we have already considered in our previous decision did not identify any errors of fact or law in the decision. The Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; the motion must demonstrate how we erred as a matter of law or policy. *See, e.g.*, *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (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). Therefore, the Petitioner has not established that our prior decision was based on an incorrect application of law or policy or that it was incorrect based on the record at the time, as required to meet the definition of a motion to reconsider. 8 C.F.R. § 103.5(a)(3).

III. CONCLUSION

Here, we acknowledge the Petitioner's new evidence in support of his new ineffective assistance of counsel claim, but it does not establish that he was in fact subjected to ineffective assistance of counsel by I-B- or that he is otherwise eligible for the requested benefit such that reopening is warranted. Moreover, the Petitioner has not demonstrated that our prior decision was erroneous based on an incorrect application of law or policy and on the evidence in the record of proceeding at the time of

the decision. The Petitioner has not otherwise established eligibility to warrant reconsideration of our prior decision. We will not re-adjudicate the petition anew and therefore the underlying petition remains denied and the motions 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: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). 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.