U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39340198

Date: SEP. 19, 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 either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 the Petitioner did not establish his qualification for the underlying visa classification as an individual of exceptional ability, or that he merits a discretionary waiver of the job offer requirement in the national interest. We dismissed the Petitioner's subsequent appeal and four combined motions to reopen and reconsider. The matter is now before us on a fifth combined motion to reopen and reconsider. 8 C.F.R. § 103.5.

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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.[1]

As an initial matter, our review on motion is limited to reviewing our latest decision, the May 1, 2025 dismissal of the Petitioner's fourth combined motion to reopen and reconsider. 8 C.F.R. § 103.5(a)(1)(ii). In our dismissal, we reviewed the evidence submitted in support of the criteria for a license or certificate to practice his profession, and for commanding a salary that demonstrates exceptional ability. 8 C.F.R.§ 204.5(k)(3)(ii)(C), (D). But we concluded that they did not overcome our previous decision. We also noted that while the Petitioner disagreed with our prior conclusions relating to the criteria of official academic record, ten years of full-time experience, membership in professional associations, and recognition for achievements and significant contributions, he did not

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

establish that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. 8 C.F.R.§ 204.5(k)(3)(ii)(A), (B), (E), (F).

On current combined motion, the Petitioner contends our previous decision "contains material inconsistencies between [U.S. Citizenship and Immigration Services' (USCIS)] previous findings and the underlying record." Specifically, the Petitioner notes that in our September 10, 2024 decision we determined that he satisfied the ten-year experience criterion at 8 C.F.R.§ 204.5(k)(3)(ii)(B) but that we did an "abrupt retreat" in concluding "that this same evidence is insufficient " in our May 1, 2025 decision Here, we confirm that the Petitioner has satisfied the ten-year experience criterion 8 C.F.R. § 204.5(k)(3)(ii)(B). However, he still has not established that he meets at least three of the six criteria under 8 C.F.R.§ 204.5(k)(3)(ii).

For instance, regarding the criterion at 8 C.F.R.§ 204.5(k)(3)(ii)(D), the Petitioner highlights that we concluded in our prior decision that the printout from payscale.com did not refer to a similar time period and occupation that allowed us to make a relevant comparison within the Petitioner's specific occupation. We note that even if the Petitioner's duties at [redacted] were like those performed by a financial analyst and/or financial manager, the printout still does not establish that he has commanded a salary that demonstrates exceptional ability.[2] For instance, the printout lacks critical information such as the date range to which the data refers, how the data was compiled, the statistical significance of the data, and other indications of the reliability and comparability of this data to the Petitioner's occupation. Therefore, the Petitioner has not established that he meets this criterion.

Moreover, in support of the criteria at 8 C.F.R.§ 204.5(k)(3)(ii)(A), (E), and (F), the Petitioner again submits copies of evidence already in the record, including the [redacted] general manager job description, bylaws for his memberships at the Brazilian Association of Financial and Capital Market Entities and the Union of Employees in Bank Establishments, and support letters. And the Petitioner also restates assertions from his prior motions and appeals.

As previously noted, 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, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the May 1, 2025 combined motion. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. Furthermore, the Petitioner's contentions in his current motion merely reargue facts and issues we have already considered in our previous decisions. *See, e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision"). We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

[2] The Petitioner also shows that his 2019 salary of R$19,870.00 is equivalent to R$27,660.00 in 2024 via a screenshot of the inflation calculator from the Brazilian Institute of Geography and Statistics website.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.