U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33670539

Date: SEP. 23, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a general and operations manager, 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).

The Director of the Texas Service Center denied the petition, concluding that the record establishes that the Petitioner qualifies for the EB-2 classification, but not for a national interest waiver as a matter of discretion. 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). 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

The Petitioner indicates on the Form I-290B, Notice of Appeal or Motion, that his submission is both a motion to reopen and a motion to reconsider. The Petitioner also submits a brief that refers to the submission as "the Motion to Reopen and Reconsider." However, the Petitioner does not identify a new fact, nor does he submit documentary evidence of such a fact in support of the motion to reopen. Because the submission does not identify a new fact, and it is not supported by documentary evidence of such a fact, it does not satisfy the requirements of a motion to reopen. *See* 8 C.F.R. § 103.5(a)(2). Therefore, the motion to reopen will be dismissed. 8 C.F.R. § 103.5(a)(4).

Next, in support of the Petitioner's motion to reconsider, the Petitioner contests the correctness of our prior decision, stating there was a, "misunderstanding of the critical elements surrounding the Petitioner's proposed endeavor . . . a heavy equipment rental service, and the significant contributions this venture is projected to make within the construction and disaster recovery sectors." However, the Petitioner's original proposed endeavor was to "continue working as General and Operations Professional in Engineering to advise U.S. companies on how to properly plan, direct, and coordinate operations of public or private sector organizations." As we concluded in our appellate decision, the initial filing made no mention of this business, for which documentation was submitted in response to the request for evidence (RFE). This was a material change to the original endeavor. A petitioner may not make material changes to a petition that has already been filed in an effort to make a deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). Therefore, as we addressed in the appellate decision, the proposed endeavor was reviewed as originally submitted, for a general and operations professional in engineering.

The Petitioner asks for reconsideration of the decision but does not identify how any law or policy was incorrectly applied. They do not address our determination, that the RFE included a material change to the proposed endeavor; but continue to assert that his company meets the standard for national importance. The Petitioner bears the burden to demonstrate eligibility or, in this case, 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); *see also* 8 C.F.R. § 103.5(a)(1)(ii); *Matter of Chawathe*, 25 I&N Dec. at 375-76. 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 motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

The Petitioner did not identify any new facts, or submit any additional documentary evidence of such facts, and therefore, the Petitioner has not established eligibility for a motion to reopen. 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 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.