U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39215928

Date: SEP. 23, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, Chief Executive Officer (CEO) for an agribusiness company, 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 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 a subsequent appeal and a combined motion to reopen and reconsider. The matter is now before us on motion to 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 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.

In our appeal decision, we determined that the Petitioner did not meet the first prong of the framework in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), specifically that he had not established the national importance of his proposed endeavor. Our appeal decision observed that the Petitioner had not provided specific, probative information or supporting documentation regarding his claims of national importance. In our subsequent decision dismissing the Petitioner's previous motion, we addressed the Petitioner's renewed claims regarding the goals of his proposed endeavor, its prospective contributions to the United States, and the importance of his field of agribusiness development. He asserted that our appeal dismissal focused only on his endeavor's consulting services rather than considering its course offerings and knowledge dissemination. But we explained that we

had considered these claims in our appeal decision and that the Petitioner had not provided sufficient evidence to demonstrate the broader implications of his proposed endeavor commensurate with national importance. *See id.* at 889 (providing in relevant part that, to establish eligibility for a national interest waiver, the petitioner must establish that their specific proposed endeavor has national importance). Furthermore, we determined that the Petitioner had not submitted documentary evidence of new facts, as required by 8 C.F.R. § 103.5(a)(2) for a motion to reopen.

On motion, the Petitioner contests the correctness of our prior decision, argues that it was based on an incorrect application of law or policy based on evidence in the record at the time of the decision. He asserts that his prior motion met the regulatory requirements of a motion to reopen because it stated new facts supported by new documentary evidence, which had potential to change the outcome of his case. Specifically, he states that he presented an updated business plan in his first motion submission which outlined expanded services and demonstrated the national importance of his proposed endeavor. He claims that our previous decisions focused on the consulting element of the endeavor, but his new business plan includes greater emphasis on the courses and program content. As he addressed the deficiency in our dismissal of his appeal, he contends, we should have considered the new business plan in our decision on his motion to reopen.

As a general matter, the Petitioner's substantive contentions in his current motion largely 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) (noting that "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"). For example, our previous decisions properly addressed both the consulting and the educational portions of his proposed endeavor, despite the Petitioner's claims in the instant motion as well as his prior motion.

Turning to the Petitioner's contentions regarding his prior motion, he is correct that we may grant motions that contain documentary evidence of new facts and demonstrate eligibility for the requested benefit, which we also noted in our prior decision. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992). The Petitioner is also correct that, in support of his prior motion to reopen, he submitted an updated business plan with an elaboration of his proposed endeavor. We acknowledge that our prior decision, the latest decision in these proceedings, did not discuss the Petitioner's submission.

However, the Petitioner has not demonstrated error in our conclusion that he had not submitted documentary evidence of new facts on motion to reopen. He argues that the business plan is a "change of circumstances that lends support to his argument on new and different angles," but he does not offer specific detail about how it demonstrates that his proposed endeavor has national importance. The Petitioner also does not elaborate on how the additional business plan contains new facts, as he states that it "does not alter the fundamental aspects of the original case, which sustain his original qualification" for the requested national interest waiver. Furthermore, he has also not explained how the purported changes from his previous business plan show his eligibility at time of filing. *See* 8 C.F.R. § 103.2(b)(1) (requiring that petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request); *see also Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm'r 1971).

Moreover, even assuming that the Petitioner had provided new evidence of his proposed endeavor's national importance in the prior motion, he was put on notice and given a reasonable opportunity to provide evidence establishing the national importance of his proposed endeavor by the SCOPS request for evidence (RFE) issued after his initial petition. We will therefore not consider it for the first time on motion to reconsider (or reopen) his appeal. *See Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (declining to consider new evidence on appeal when the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it) (citing *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988)); *see also* 8 C.F.R. § 103.2(b)(11) (requiring that in response to a request for evidence or notice of intent to deny, all evidence must be submitted together at one time and that submitting only some of the requested evidence will be considered a request for a decision on the record).

In conclusion, 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 and the underlying petition remains denied. 8 C.F.R. § 103.5(a)(4).

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.