U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33768970

Date: SEP. 25, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an accountant and finance 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 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 two prior combined motions to reopen and reconsider. The matter is now before us on a third combined motion 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).

On motion to reopen, the Petitioner submits copies of previously submitted and considered evidence, as well as copies of prior decisions in her case. However, the Petitioner does not submit any new evidence and does not assert any new facts supported by documentary evidence that establish eligibility, as required on motion to reopen. *See* 8 C.F.R. § 103.5(a)(2), (4). As such, her submission does not meet the requirements of a motion to reopen, and her motion must be dismissed.

On motion to reconsider, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner relies on an assertion that the prior motion should have been accepted as filed when it was mailed, rather than when received; however, the Petitioner did not identify any incorrect application of relevant law or policy at the time of our prior decision. A motion on an

unfavorable decision must be filed within 33 calendar days of the date we mailed the decision. 8 C.F.R. §§ 103(a)(1), 103.8(b). The prior unfavorable decision was issued on September 13, 2023, and the motion was not received until November 27, 2023 – 75 days after the decision. The Petitioner did not explain why our dismissal of the untimely-filed motion was incorrect at the time we rendered that decision. As the brief the Petitioner submitted does not meet the above requirements for a motion to reconsider, the motion must be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.