U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32314489

Date: SEP. 30, 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 Petitioner did not demonstrate her eligibility for the requested national interest waiver. We dismissed a subsequent appeal. The matter is now before us on a combined motion to reopen and 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 combined motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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).

We incorporate by reference our prior analysis in the appeal decision. By way of summation, we concluded that the record does not establish the Petitioner qualifies as a member of the professions holding an advanced degree. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2). We acknowledged that the record establishes the Petitioner has a degree in fashion from [redacted] and a certificate from [redacted] However, we explained that the evaluation of the Petitioner's education and experience is not in accord with the Petitioner's educational records and, therefore, bears no evidentiary weight, citing *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988); *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

More specifically, we noted that the Petitioner's academic transcript indicates that, although she worked towards her degree between 2001 and 2004, "she did not take any courses in the first semester of 2002, and furthermore [it] does not state any grades for the classes taken from 2001 to 2002." Additionally, "[t]here is no indication in the transcript or the rest of the petition record as to why the Petitioner was exempt from three semesters of classes or whether her course of study actually lasted four years." We also noted that, even if the record established that the Petitioner's degree is equivalent to a U.S. bachelor's degree, which it does not, the record does not establish that the Petitioner has at least five years of progressive, post-baccalaureate work experience in her specialty, in order to qualify as the equivalent of an advanced degree. *See* 8 C.F.R. § 204.5(k)(2). Therefore, we concluded that the record does not establish the Petitioner qualifies for second-preference classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the act; *see also* 8 C.F.R. § 204.5(k)(2).

On motion to reopen, the Petitioner reasserts, in relevant part, that she has "a Bachelor's degree in Fashion and a Certificate in Business," which, "aligned with her extensive professional experience, equate to a U.S. Master's degree in Business Administration, qualifying her under EB-2 criteria." Although the Petitioner also discusses on motion to reopen issues beyond those we addressed in our prior decision, she does not state a new fact regarding how her degree may qualify as equivalent to a U.S. bachelor's degree, nor does she submit documentary evidence that may support such a new fact. Because the Petitioner does not state a new fact on motion to reopen material to the basis on which we dismissed the appeal, and because she does not submit documentary evidence that may support such a new fact, we will dismiss the motion to reopen. 8 C.F.R. § 103.5(a)(2), (4).

Next, 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.

The Petitioner generally asserts on motion to reconsider that our prior decision "amounts to the violation of Due Process and fair treatment under [U.S. Citizenship and Immigration Services (USCIS)] policy, the United States Constitution and international treaties." However, the Petitioner does not elaborate on how our conclusion that the record does not establish she has both the equivalent of a U.S. bachelor's degree and at least five years of progressive, post-baccalaureate work experience in her specialty—based on specific evidentiary issues we addressed in our decision—violates the U.S. Constitution in general and due process more specifically, nor does she identify any particular USCIS policy or international treaty our reasoned decision may violate.

Because 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, the motion to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(3)-(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.