U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33875076

Date: SEPT. 30, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur in the bars and restaurants industry, seeks second preference immigrant classification (EB-2) as an individual of exceptional ability as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 establish that (1) he qualifies for the EB-2 classification as an individual of exceptional ability and (2) that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

We dismissed a subsequent appeal, concluding that the Petitioner did not address or contest the Director's decision regarding his qualification for the EB-2 classification, and, therefore, he abandoned his eligibility claim for the EB-2 classification. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) and holding that an issue not raised on appeal is waived).

We dismissed subsequent combined motions to reopen and reconsider. We dismissed the Petitioner's motion to reopen, finding that he provided copies of the previously submitted education and experience credentials and business plan but did not offer new facts to qualify the eligibility requirements of a motion to reopen. *See* 8 C.F.R. § 103.5(a)(2). We determined that the submitted evidence did not overcome our prior determination that the Petitioner on appeal did not address or contest his eligibility for the EB-2 classification. We also dismissed the Petitioner's motion to reconsider because he did not contest the correctness of our prior decision regarding the EB-2 classification issue. The Petitioner's motion brief only discussed his qualification for a national interest waiver. We concluded that the Petitioner has not demonstrated that our prior appeal decision was based on an incorrect application of law or policy at the time we issued the decision. *See* 8 C.F.R. § 103.5(a)(3).

The matter is now before us again 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 motions.

I. LAW

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).

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.

II. ANALYSIS

A. Motion to Reopen

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 motion to reopen. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion.

The Petitioner presents copies of the previously submitted appeal brief, his resume, high school completion certificate, grade report, business plan of [redacted], and an evaluation report of his education and work experience from GEO Credential Services. The submitted evidence does not establish that we erred in dismissing the Petitioner's prior motion to reopen because he had not offered new facts supported by affidavits or other documentary evidence. *See* C.F.R. § 103.5(a)(2). Furthermore, the submitted evidence does not demonstrate that he qualifies for the EB-2 classification as an individual of exceptional ability, and, therefore, it does not have the potential change the outcome of this case. *See Matter of Coelho*, 20 I&N Dec. at 473.

Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision, and we will dismiss the motion. *See* 8 C.F.R. § 103.5(a)(4).

B. Motion to Reconsider

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). 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").

The Petitioner contends that the Director's determination that he is not eligible for and does not merit a national interest waiver as a matter of discretion is legally incorrect because the Director did not give enough weight to the significant advantages of his work and the evidence that he is in a good position to advance the proposed endeavor based on his experience, qualifications, and successful projects and misjudged the significance of his endeavor to the country. The Petitioner also claims that the Director's decision contains factual inaccuracies because it did not accurately reflect the evidence about his achievements and the projected impact of his work. However, the Petitioner does not argue that we erred in dismissing his prior motion to reconsider for failure to contest the correctness of our appeal decision regarding the EB-2 classification issue. The Petitioner's motion does not establish that our prior motion decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence of record at the time of the decision. *See* 8 C.F.R. § 103.5(a)(3).

Because the Petitioner has not established that our previous decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence of record at the time of the decision, we will dismiss the motion. *See* 8 C.F.R. § 103.5(a)(4).

III. CONCLUSION

On motion to reopen, the Petitioner has not provided new facts supported by affidavits or other documentary evidence to establish that we erred in dismissing his prior motion to reopen. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence of record at the time of the decision. According, we will dismiss the motions. We will not re-adjudicate the petition anew, and, therefore, the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.