U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34290064

Date: SEP. 30, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a geologist, seeks second preference 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 EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidentiary requirements for EB-5 classification as an individual of exceptional ability. The Director further concluded that the Petitioner did not establish his eligibility for a national interest waiver. We dismissed a subsequent appeal. The Petitioner then filed a motion to reopen the dismissed appeal. We dismissed that motion. The matter is now before us on a second motion to reopen.

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 demonstrating eligibility for the requested immigration benefit at the time the petition was filed. 8 C.F.R. § 103.5(a)(2). We interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes within the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." A motion to reopen that does not satisfy the applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

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 and arguments to the extent they pertain to our latest decision dismissing the motion to reconsider. 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 dismissed the Petitioner's previous motion to reopen for three reasons. First, we explained that the Petitioner's submission of documentation previously included in the record did not constitute "new facts." Second, while we recognized that his submission of his placement in an eighth-grade Geography Olympiad constituted a new fact presented as evidence that he met the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F), we pointed out that he did not provide an explanation of how that evidence satisfied the criterion; the Petitioner did not explain how his placement in the Geography Olympiad amounted to recognition for achievements and significant contributions to the industry or field from peers, governmental entities, or professional or business organizations.

Third, we addressed the Petitioner's claim that he met the requirements of the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C) concerning licensure or certification, as well as at the criterion at 8 C.F.R. § 204.5(k)(3)(iii), which he claimed to satisfy based on comparable evidence. We explained that, concerning the requirements of a motion to reopen, "new facts" must pertain to new information associated with the eligibility claims a filing party presented in their most recent filing, and that new bases for eligibility are distinct from the type of "new facts" the regulation references. New eligibility claims advanced for the first time to an administrative appellate body, even at the motion-to-reopen stage, are not properly before us.[1] We determined that the motion and supporting evidence did not overcome our decision to dismiss the Petitioner's appeal and dismissed the motion to reopen.

In support of the current motion, the Petitioner submits documentation previously submitted, including a business plan describing his intention to develop a web application that would function as a digital education tool for the identification of rocks and minerals. The Petitioner also submits webpages from appstoreconnect.apple.com depicting a [redacted] App Report." The report shows data and reviews of the [redacted] web application from May and June of 2024. A petitioner must meet all the eligibility requirements of the petition at the time of filing. 8 C.F.R. § 103.2(b). As the present petition was filed in 2021, this documentation cannot be considered as evidence to support the petition or as new pertinent facts upon which to base the reopening of his case.

In addition to the web application information, the Petitioner submits a new letter of support that references his completion of an online course through HarvardX; we note that the completion certificate for this course—as well as the certificates for several other courses—are all dated 2022, which post-date the petition's filing date of 2021. We also observe that this new letter, like the previously submitted letters of support, highlights the Petitioner's understanding of geology and computer programming languages. And like the earlier letters, this letter also refers to other web applications that the Petitioner has developed—a claim that is not supported by any corroborating evidence in the record. This information does not constitute "new facts," as the record already contains letters of support and statements from the Petitioner describing his education and purported software development experience. 8 C.F.R. § 103.5(a)(2). The documentation submitted on motion is a repackaging of material that has been previously submitted in this case; the documentation does not provide us with new pertinent information that warrants reopening the Petitioner's case. As such, we have no basis to reopen our prior decision.

[1] *Matter of M-F-O-*, 28 I&N Dec. 408, 410 n.4 (BIA 2021) (refusing to consider an appellant's humanitarian claims that were presented for the first time to an appellate body).

Because the Petitioner has not met the requirements of a motion to reopen at 8 C.F.R. § 103.5(a)(2), the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.