U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25516524

Date: APR. 11, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a business management consultant, seeks second preference immigrant classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts or business, 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). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish the national importance of the proposed endeavor or that a waiver of the requirement of a job offer would be in the national interest. We dismissed the appeal, concluding that the Petitioner has not sufficiently demonstrated that his proposed endeavor is of national importance. 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). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the motions.

A motion to reopen must state new facts to be proved and be supported by affidavits or other evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or United States Citizenship and Immigration Services (USCIS) 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the benefit sought. The scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i).

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323, (1992) (citing *INS v. Abudu*, 485 U.S. 94, 108 (1988)); *see also Selimi v. Ashcroft*, 360 F.3d 736, 739 (7th Cir. 2004). There is a strong public interest in bringing proceedings to a close as promptly as is consistent with giving both parties a fair opportunity to develop and present their respective cases. *Abudu*, 485 at 107.

On motion, the Petitioner submits, among other things, a new statement; a certificate of organization for [redacted] in the State of Wyoming; a statement naming the Petitioner a member and manager of [redacted] a letter of intent from [redacted] for an initial investment plan in [redacted] with a floor limit of 10 million dollars; and, documents regarding economic investments and growth in Wyoming. In the Petitioner's statement, he reiterated numerous examples of his past accomplishments and successes to illustrate what he is capable of replicating through a proposed endeavor. The statement also discussed a new endeavor not presented in the initial petition or on appeal. The Petitioner explains that after conducting market research, he became aware of a mutual benefit involving the State of Wyoming and international startups through the development of an international health startup hub. With that in mind, [redacted] was developed, and the stated focus of the company is to deliver value to private equity funds, investors, and partners; manage investments from individuals and families; and provide consultancy services.

On a motion to reopen we do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, 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."

In the current motion to reopen, the Petitioner either; (1) presents new claims that he never previously asserted before the Director or on appeal; or (2) submits evidence that came into being after the petition filing date. Each of these actions are prohibited within the current proceedings, as we explain below.

On motion, the Petitioner provides evidence of a different proposed endeavor via creation of a new company, [redacted] and the new idea of an international health startup hub located in Wyoming. A motion to reopen should not act as a vehicle—as a Trojan horse of sorts—to introduce new eligibility claims for the first time. These two concepts (new facts versus new eligibility claims) are distinct and are not interchangeable. New eligibility assertions advanced for the first time to an administrative appellate body are not properly before it. *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 on appeal). In addition, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). If significant, material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

Further, the Petitioner presents evidence on motion to support his new facts, but that material postdates the petition filing date. For example, the certificate of organization of [redacted] is dated [redacted] 2022, after the current petition was filed. The Petitioner must establish eligibility at the

time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). A request for an immigration benefit "must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be through adjudication." 8 C.F.R. § 103.2(b)(1); *Ahmed v. Mukasey*, 519 F.3d 579, 582 (6th Cir. 2008); *Karakenyan v. U.S. Citizenship & Immigr.*, 468 F. Supp. 3d 50, 52 (D.D.C. 2020).

The Petitioner therefore has not satisfied the requirements for a motion to reopen. Specifically, he has not offered new facts associated with his previous eligibility claims that are also supported by evidence. The result of this shortcoming is that the Petitioner has not demonstrated that we should reopen the proceedings.

Regarding the motion to reconsider, we stress again that to establish merit for reconsideration of our latest decision, a petitioner must both state the reasons why the petitioner believes the most recent decision was based on an incorrect application of law or policy; and it must also specifically cite laws, regulations, precedent decisions, and/or binding policies it believes we misapplied in our prior decision. The Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; the motion must demonstrate how we erred as a matter of law or policy. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision).

Although we acknowledge the Petitioner's submission of a brief, we determine the Petitioner does not directly address the conclusions we reached in our immediate prior decision or provide reasons for reconsideration of those conclusions. Moreover, the brief lacks any cogent argument as to how we misapplied the law or USCIS policy in dismissing the prior motion to reconsider.

In light of the above, we conclude that this motion does not meet all the requirements of a motion to reconsider and must therefore be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

The Petitioner therefore has not overcome our prior decision or shown proper cause to reopen or reconsider this matter. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.