U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28824697

Date: OCT. 18, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a legal consultant, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not qualify for classification as a professional holding an advanced degree, nor had the Petitioner established 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. Although we acknowledged that the Petitioner qualifies for second-preference classification as a member of the professions holding an advanced degree, we concluded 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. The matter is now before us 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 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).

The Petitioner indicates on the Form I-290B, Notice of Appeal or Motion, that her submission is both a motion to reopen and a motion to reconsider. The Petitioner also submits a brief that refers to the submission as "the motion to reopen and reconsider." However, the Petitioner does not identify a new fact, nor does she submit documentary evidence of such a fact in support of the motion. Because the

submission does not identify a new fact, and it is not supported by documentary evidence of such a fact, it does not satisfy the requirements of a motion to reopen. *See* 8 C.F.R. § 103.5(a)(2). Therefore, the motion to reopen will be dismissed. 8 C.F.R. § 103.5(a)(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.

On motion to reconsider, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner asserts in a two-page brief that "all the necessary documents along with the filing and RFE response . . . were not properly analyzed by the Service, violating the Fourth Amendment of the Constitution of the United States of America as Petitioner provided timely and proper notice to his [sic] RFE response to USCIS." However, the Petitioner does not specifically identify on motion any particular item of evidence that was submitted, how such evidence addresses any particular aspect of national importance, and how we may have erred in our analysis of such evidence in our prior decision. *See* 8 C.F.R. § 103.5(a)(1)(ii) (limiting the scope of a motion to the latest decision).

Moreover, the Petitioner does not clarify how the Fourth Amendment of the Constitution of the United States of America applies to her appeal. The Fourth Amendment provides, in full:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV. The Petitioner does not explain how our prior decision may have violated her right to security against unreasonable searches and seizures in her person, house, papers, and effects, or how our prior decision may have issued a warrant without probable cause, particularly describing the place to be searched and the person or things to be seized. The Petitioner bears the burden to demonstrate eligibility or, in this case, the applicability of the law or policy she asserts we incorrectly applied in the latest decision. 8 C.F.R. § 103.5(a)(3); *see also* 8 C.F.R. § 103.5(a)(1)(ii); *Matter of Chawathe*, 25 I&N Dec. at 375-76. 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. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.