U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30647447

Date: APR. 4, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as well as a national interest waiver (NIW) 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the record did not establish that he merits a discretionary waiver of the job offer requirement in the national interest, and we dismissed a subsequent appeal. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motions.

A motion to reopen is based on new facts that are supported by documentary evidence, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). If warranted, we may grant requests that satisfy these requirements, then make a new eligibility determination.

The procedural history relating to this filing is not necessary for us to restate it here. We incorporate the history by reference from our previous discussion on the matter. The issues here are whether the Petitioner: (1) has submitted new facts, supported by documentary evidence, to warrant reopening the appeal, and (2) has established that we incorrectly applied the law or USCIS policy in dismissing his appeal.

First, the Petitioner's motions do not satisfy the basic requirements for either type of motion. For the motion to reopen, he doesn't offer new facts that are supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). And regarding the motion to reconsider, he makes no argument 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).

Beyond those procedural failures, the matters the Petitioner must first overcome within this motion are limited to the issues discussed within our most recent decision; the decision on their appeal. General support that a motion must first overcome the most recent decision lies within the regulation

at 8 C.F.R. § 103.5(a)(1)–(3) where it repeatedly discusses the underlying or latest decision, it limits the time one has to file a motion after the most recent decision, and it references jurisdiction resting with the entity who made the latest decision. This demonstrates that any motion must first address and overcome the most recent adverse decision before the filing party's arguments may move on to any issue that arose in a previous petition, appeal, or motion filing.

In the motions, the Petitioner first focuses on what transpired before the Director. However, the appeal was his opportunity to contest those issues, he did so, and our appeal decision explained why those arguments were not persuasive. For this reason we will not address the Petitioner's motion arguments relating to the Fifth Amendment, which guarantees "due process of law." U.S. Const. amend. V.

Next, he briefly addresses our appeal dismissal claiming it was deficient because it did not evaluate all the arguments within his appeal brief. He further posits that doing so would have led to a different conclusion establishing he qualifies for both the EB-2 classification as well as the national interest waiver requirements. Yet, he doesn't specify what evidence was not evaluated, nor how such an analysis would have altered our decision to dismiss the appeal.

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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Commensurate with that burden is the responsibility for explaining the significance of proffered evidence. *Repaka v. Beers*, 993 F. Supp. 2d 1214, 1219 (S.D. Cal. 2014). Filing parties should not refer to large quantities of evidence without notifying us of the specific documentation that corroborates their claims within such large quantities, as doing so places an undue burden on the appellate body to search through the documentation without the aid of the filing party's knowledge. *Toquero v. INS*, 956 F.2d 193, 196 n.4 (9th Cir. 1992).

A reviewing body is not required to sift through the record to search for errors and build the appellant's argument before dismissing the appeal or the motions. *Id.*; *Spear Mktg., Inc. v. BancorpSouth Bank*, 791 F.3d 586, 599 (5th Cir. 2015); *S.E.C. v. Thomas*, 965 F.2d 825, 827 (10th Cir. 1992); *see also Harolds Stores, Inc. v. Dillard Dep't Stores, Inc.*, 82 F.3d 1533, 1540 n.3 (10th Cir. 1996) (concluding that where the evidence in the record is voluminous, it is imperative that an appellant provide specific references to record); *Uli v. Mukasey*, 533 F.3d 950, 957 (8th Cir. 2008) (citing to *Matter of D-I-M-*, 24 I&N Dec. 448, 451 (BIA 2008) and noting when a case includes voluminous background materials, it is necessary to specifically identify the material one relies on to come to their conclusion). The truth is to be determined not by the quantity of evidence alone but by its quality. *Chawathe,* 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989)).

The Petitioner has not demonstrated that we should either reopen the proceedings or reconsider our decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.