U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30004807

Date: FEB. 20, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner 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 Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established that a waiver of the job, and thus of the labor certification, would be in the national interest. The Director dismissed a subsequent motion to reconsider. We dismissed an appeal and a subsequent, combined motion to reopen and to reconsider. The matter is now before us again on a combined motion to reopen and to 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 combined motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 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 prior motion.

On motion to reopen, the Petitioner neither states a new fact nor supports such a fact by documentary evidence. Instead, the Petitioner itemizes evidence already in the record "that are described in the [b]rief [submitted in support of the prior motion] (please see case file [b]rief dated March 5, 2023)." The Petitioner also submits an undated business plan in support of the motion to reopen; however, the record already contains a copy of a business plan. The facts addressed in the undated business plan are not new, as contemplated by 8 C.F.R. § 103.5(a)(2), because the record already contains the Petitioner's plan to operate the business described in the undated plan. Moreover, to the extent that

the undated business plan presents a new set of facts not described in the business plan already in the record, such a new set of facts could not establish eligibility. *See* 8 C.F.R. § 103.2(b)(1) (providing that a petitioner must establish eligibility for the benefit sought at the time the petition is filed); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971) (providing that a visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts); *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998) (providing that a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to U.S. Citizenship and Immigration Services (USCIS) requirements).

In summation, the Petitioner has not provided a new fact to establish that we erred in dismissing the prior motion. Because the Petitioner has not established a new fact that would warrant reopening of the proceeding, the motion to reopen will be dismissed. *See* 8 C.F.R. § 103.5(a)(2), (4).

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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. 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 the motion to reconsider to the extent that it pertains to our latest decision dismissing the combined motion.

On motion to reconsider, the Petitioner reasserts that he qualifies for second preference immigrant classification; however, the Director concluded that the Petitioner qualifies for second preference immigrant classification and we specifically affirmed that he qualifies for second preference immigrant classification in our decision dismissing the appeal. Therefore, the Petitioner's reassertion that he qualifies for second preference immigrant classification is immaterial to our basis for dismissing the prior combined motion. The Petitioner also reasserts that he "has proved that he fulfills all the prongs to seek for National Interest Waiver pursuant to *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016)," and he references examples of non-precedent decisions dated between 2002 and 2018 wherein we sustained the appeals. However, none of the referenced decisions were published as a precedent; therefore, they do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Because these non-precedent decisions do not bind USCIS officers in future adjudications, the Petitioner's references to them do not identify a law or policy that our prior decision may have applied incorrectly. Moreover, even if these non-precedent decisions were material—and they are not—we already addressed the Petitioner's assertions regarding these non-binding decisions in our decision dismissing the appeal. 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 an underlying decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006).

In summation, the Petitioner has not established on motion to reconsider that our previous decision was based on an incorrect application of law or policy at the time we issued our decision; therefore, the motion to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(3)-(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.