U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29695488

Date: JAN. 8, 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 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 he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the Petitioner's appeal. 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 motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy the aforementioned requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner states that we did not consider all the evidence that he had submitted with the petition and, later, in response to a request for evidence. He asserts that "those documents were not properly analyzed by the Service, violating the Fourth Amendment of the Constitution of the United States of America." The Fourth Amendment in part prohibits "unreasonable searches and seizures." U.S. Const. amend. IV. We conclude the Petitioner's citation to the Fourth Amendment is not relevant to the matter at hand as he has not explained how we violated the Fourth Amendment in dismissing his appeal. Citing to an authority that is not relevant to the grounds of the unfavorable decision will not meet the requirements of a motion to reconsider. *See Matter of O-S-G-*, 24 I&N Dec.

56, 58 (BIA 2006) ("A motion to reconsider is not a mechanism by which a party may file a new brief . . . raising additional legal arguments that are unrelated to those issues raised before the Immigration Judge and on appeal.").

The Petitioner asks that we "reconsider the adverse decision and reopen [the petition] and give full consideration [to] all the submitted documents." The only decision properly before us on motion is our July 2023 appellate decision, and not the Director's December 2022 denial of the petition. *See* 8 C.F.R. § 103.5(a)(1)(i), which limits the available time to file a motion to reconsider and requires that motions pertain to "the prior decision," which in this case is our July 2023 appellate decision.

In our decision dismissing the appeal, we agreed with the Director that the Petitioner did not meet the first prong of the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). We explained that the Petitioner had not shown that his proposed endeavor would extend beyond his company and its clients to impact the information technology consulting field in which he intends to operate, or that it would broadly enhance societal welfare at a level commensurate with national importance. In addition, we stated that the Petitioner had not demonstrated that his undertaking has significant potential to employ U.S. workers or would result substantial positive economic benefits to the regional or national economy.

The Petitioner's motion does not address our specific determinations and conclusions or establish that they were in error. Instead, the Petitioner makes vague and general assertions that USCIS disregarded unspecified evidence. Such assertions do not establish that our appellate decision was incorrect, and do not oblige us to re-adjudicate the appeal de novo. The Petitioner does not identify any specific documents or other pieces of evidence that we overlooked in our appellate review of the record, and he does not explain how discussion or consideration of those materials would have changed the outcome of our July 2023 decision. He therefore has not demonstrated that our appellate decision was based on an incorrect application of law or USCIS policy and that our decision was incorrect based on the evidence in the record at the time of the decision. In addition, the Petitioner has not offered new evidence or facts on motion to overcome the stated grounds for dismissal in our appellate decision.

The Petitioner has not established new facts relevant to our appellate decision that would warrant reopening of the proceedings, nor has he shown that we erred as a matter of law or USCIS policy. Consequently, we have no basis for reopening or reconsideration of our decision. Accordingly, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and his underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.