U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29886402

Date: JAN. 26, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur, 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. 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 qualifies for classification as a member of the professions holding an advanced degree, but did not establish eligibility for the national interest waiver. We dismissed a subsequent appeal on the merits, and we dismissed a combined motion to reopen and reconsider because the filing did not meet the requirements of either type of motion. The matter is now before us on a second combined motion 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). On motion, the Petitioner does not claim any new facts and does not submit any new evidence. Therefore, the motion does not meet the requirements of a motion to reopen, and must be dismissed. *See* 8 C.F.R. § 103.5(a)(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). 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.

The Director denied the petition in December 2021, listing the Petitioner's supporting evidence, including evidence submitted in response to a request for evidence (RFE), and concluding that the Petitioner had not established: (1) the national importance of his proposed endeavor and (2) that, on

balance, a waiver of the job offer requirement would be beneficial to the United States, as required by *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). We dismissed the Petitioner's appeal from that decision in March 2023, adopting and affirming the Director's decision and concluding that the Petitioner had not established the "potential prospective impact" of his proposed endeavor.

The Petitioner filed a combined motion to reopen and reconsider, stating that the dismissal violated the Fourth Amendment of the U.S. Constitution because we had not fully considered the evidence of record. We dismissed that motion in July 2023, concluding that the Petitioner had "not explained *how* we violated the Fourth Amendment in dismissing [the] appeal," and we stated:

> [The Petitioner] generally alleg[ed] that we erred in dismissing [the] appeal - without identifying any specific errors on our part in doing so. . . .
>
> [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.

In its second motion, the Petitioner does not address our stated grounds for dismissing the prior motion. Instead, the Petitioner repeats its prior assertion that USCIS did not consider all the evidence that the Petitioner had submitted with the petition and, later, in response to an RFE. The Petitioner asserts that "the Expert Opinion Letter presented by the Petitioner . . . , that outlines Petitioner's qualifications and all the benefits generated by his proposed endeavor in the United States was not even considered by the adjudicating officer." The Petitioner contends, without further elaboration, that if the evidence of record had "been properly analyzed," then USCIS would have concluded that the Petitioner "meets all three prongs of *Dhanasar* for the National Interest Waiver."

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). The Petitioner's current motion does not address our dismissal of the prior motion. Instead, it disputes the denial of the underlying petition and largely repeats prior arguments we have already considered in our previous decisions. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("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 the prior . . . decision"). We will not re-adjudicate the petition anew. The underlying petition remains denied.

The Petitioner has not identified any erroneous application of law or policy in our July 2023 decision, and has not shown that our July 2023 decision was incorrect based on the evidence then in the record. Therefore, the motion does not meet the requirements of a motion to reconsider under 8 C.F.R. § 103.5(a)(3), and must be dismissed. *See* 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.