U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20603864

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a legal analyst and consultant, 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 Nebraska 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 subsequent appeal, concluding that though the record shows that the proposed endeavor would have substantial merit, the Petitioner did not establish the national importance of his proposed endeavor.[1] We reserved our opinion on whether the record establishes (1) that the Petitioner is well-positioned to advance the endeavor, and (2) on balance, it would be beneficial for the United States to waive the requirements of a job offer and thus of a labor certification.[2]

The matter is now before us again on a combined motion to reopen and motion to reconsider. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Upon review, we will dismiss the combined motions.

I. MOTION TO REOPEN

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The Petitioner's motion includes

[1] For the sake of brevity, we incorporate our previous decision in this matter, ID# 17944664 (AAO AUG. 24, 2021).

[2] After a petitioner has established eligibility for EB-2 classification, USCIS may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016) *See Dhanasar* at 888-91, for elaboration on these three prongs.

a Form I-290B, Notice of Appeal or Motion, and a copy of the brief he previously submitted on appeal. The Petitioner's brief does not state new facts nor is it supported by documentary evidence; therefore, its motion does not meet the requirements for a motion to reopen stated at 8 C.F.R. § 103.5(a)(2). Therefore, we will dismiss the Petitioner's motion to reopen. 8 C.F.R. §103.5(a)(4).

II. MOTION TO RECONSIDER

A motion to reconsider must establish that our previous 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 proceeding at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

On motion, the Petitioner resubmits his appellate brief. The Petitioner indicates "the purpose of this [b]rief is to present a [m]otion, concerning the denial of the I-140 [national interest waiver] petition." Notwithstanding the alleged misapplications of law, we must dismiss the motion because it does not address or challenge our most recent decision. The review of any motion is narrowly limited to the basis for the prior adverse decision. Although the Petitioner's brief on motion addresses the Director's denial of the underlying petition, the subject of the immediate prior decision was our dismissal of the Petitioner's appeal.

The Petitioner has not established that our prior decision was based on an incorrect application of law or policy, nor has it otherwise shown proper cause to reconsider the previous decision. A moving party must specify the factual and legal issues that were decided in error or overlooked in the decision or must show how a change in law materially affects the prior decision. 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. *See Matter of O-S-G*, 24 I&N Dec. 56, 60 (BIA 2006).[3] Accordingly, we will dismiss the motion to reconsider.

III. CONCLUSION

The Petitioner has not shown that we erred as a matter of law or USCIS policy in dismissing his appeal, nor has he established relevant new facts that would warrant reopening of the proceedings. 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.

[3] *O-S-G-* relates to motions to reconsider before the Board of Immigration Appeals (the Board), governed by 8 C.F.R. § 1003.2(b)(1), which states: "A motion to reconsider shall state the reasons for the motion by specifying the errors of fact or law in the prior Board decision and shall be supported by pertinent authority." These requirements are fundamentally similar to those found at 8 C.F.R. § 103.5(a)(3), and therefore the same logic applies.