U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20687300

Date: MAR. 25, 2022

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 administrator, 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 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 a subsequent appeal, concluding that, although the Petitioner established he was an advanced degree professional, he was not eligible for a national interest waiver of the job offer. We then dismissed a subsequent combined motion to reopen and motion to reconsider, because the motion did not present a new fact supported by documentary evidence, and the motion did not identify a specific law or policy we may have erroneously applied to the evidence of record at the time of the decision, respectively. The matter is before us again on a second 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. Upon review, we will dismiss the combined motion.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, "new facts" are facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original application. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

A motion to reconsider must establish that our 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 do not consider new facts or evidence in a motion to reconsider.

II. ANALYSIS

As noted above, we dismissed the prior combined motion because the motion to reopen did not present a new fact, supported by documentary evidence, and because the motion to reconsider did not identify a law or policy that we may have erroneously applied to the evidence of record at the time of the decision. *See* 8 C.F.R. § 103.5(a)(2)-(3). As we narrowed our prior motion analysis to whether the basis for the prior decision was in error, our analysis for this combined motion is limited to the following: (1) whether we erred in concluding that the prior motion to reopen did not present a new fact, supported by documentary evidence; and (2) whether we erred in concluding that the prior motion to reconsider did not identify a law or policy that we may have erroneously applied to the evidence of record at the time of the decision on the appeal. We address the combined motion separately below.

A. Motion to Reopen

The Petitioner does not state a new fact supported by documentary evidence for the second motion to reopen, as required by 8 C.F.R. § 103.5(a)(2). Instead, the extent of the second combined motion filing, other than the Form I-290B, Notice of Appeal or Motion, is an 11-page brief, a copy of our decision on the prior combined motion, and the filing fee. Accordingly, we will dismiss the second motion to reopen because it does not state a new fact supported by documentary evidence. *See* 8 C.F.R. § 103.5(a)(2); *see also* 8 C.F.R. § 103.5 (a)(4) (stating that a motion that does not meet applicable requirements shall be dismissed).

B. Motion to Reconsider

Turning to the second motion to reconsider, the Petitioner does not identify a law or policy that we may have incorrectly applied in our decision on the underlying combined motion. *See* 8 C.F.R. § 103.5(a)(3). Moreover, the second motion to reconsider does not identify a law or policy that we may have incorrectly applied in our initial decision on the appeal. Instead, the Petitioner summarizes procedural history and disputes the conclusions we reached in our analysis of the evidence of record.[1]

The Petitioner has not established on motion that we misapplied a law or policy and that our decision was incorrect based on the evidence in the record of proceedings at the time of the decision; therefore, we will dismiss the motion to reconsider. *See id.*; *see also* 8 C.F.R. § 103.5(a)(4) (stating that a motion that does not meet applicable requirements shall be dismissed).

[1] Although, under current regulations, the Petitioner may continue to file additional motions, each subsequent motion must address whether the prior motions satisfied motion requirements before the issue of whether the Petitioner may establish eligibility for the requested benefit is material.

III. CONCLUSION

The second combined motion to reopen and motion to reconsider does not include new information or evidence that overcomes the grounds underlying our previous decision and does not show that our previous decision was based on an incorrect application of law or policy.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.