U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29262597

Date: DEC. 20, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a supply chain specialist and entrepreneur in the event services industry, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability in the sciences, arts, or business, as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Acting Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the classification's job offer requirement, and thus of the labor certification, would be in the national interest. We dismissed a subsequent appeal affirming the Acting Director's decision and also concluding that the Petitioner did not establish eligibility for the requested EB-2 classification as a member of the professions possessing an advanced degree, or as an individual of exceptional ability in the sciences, arts, or business. The matter is now before us on a motion to reconsider.

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).

On motion, the Petitioner submits a brief with no new evidence and asserts that our prior decision was "based on erroneous applications of law and precedents." Specifically, the Petitioner asserts that we "unnecessarily" reviewed the Acting Director's decision that he established qualification as an individual with exceptional ability. The Petitioner also notes that in our dismissal of the appeal we described him as an applicant for classification as an individual of extraordinary ability in the sciences, art, or business, and "applied the wrong criteria" in analyzing his eligibility. Additionally, the Petitioner asserts that we did not consider "robust evidence such as Business Plan, industry reports, and articles, along with other substantial evidence that, more likely than not, the proposed endeavor is one of national importance."

At the outset, and as we noted in our prior decision, we review the questions in matters on appeal de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). The AAO's de novo authority

is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Therefore, our review of the Petitioner's eligibility for the requested classification was not in error.

We agree that here, the Petitioner seeks classification as an individual of exceptional ability in the sciences, arts, or business. Although our prior decision incorrectly stated that the Petitioner did not establish eligibility for classification as an individual with extraordinary ability,[1] rather than exceptional ability, the error was typographical only and not in the overall analysis of the Petitioner's eligibility. We disagree with the Petitioner that we "applied the wrong criteria" in our analysis of the Petitioner's eligibility. Our dismissal of the appeal correctly references the criteria that establish eligibility as an individual with exceptional ability set forth under 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F) and provides a detailed discussion of each. The Petitioner does not identify any instance in our decision that the criteria demonstrating extraordinary ability set forth at 8 C.F.R. § 204.5(h)(3) was applied to the Petitioner or discussed in our analysis of his eligibility. We conclude, therefore, that the incorrect mention of extraordinary ability in our decision was not an incorrect application of law or policy.

While we acknowledge the Petitioner's assertion that we did not consider certain evidence demonstrating the national importance of his proposed endeavor, our prior decision discusses the evidence the Petitioner identifies on motion and explains the deficiencies in detail. The Petitioner does not address our discussion or the deficiencies on motion or explain how we erred in our review of this evidence.

For the reasons discussed above, the Petitioner has not established proper grounds for reconsideration. 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. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit, in essence, the same brief and seek reconsideration by generally alleging error in the prior decision).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not shown that our prior decision contained errors of law or policy, or that the decision was incorrect based on the record at the time of that decision. Therefore, the motion does not meet the requirements of a motion to reconsider and must be dismissed.

ORDER: The motion to reconsider is dismissed.

[1] The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). *See also* Section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A).