U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27272951

Date: JULY 25, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner 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 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 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. The Director dismissed a subsequent motion to reconsider and we dismissed a subsequent 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 motion.

I. LAW

A motion to reopen is based on new facts that are supported by documentary evidence, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3).

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes within the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." A motion to reopen that does not satisfy the applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

A motion to reconsider on the other hand must: (1) state the reasons for reconsideration, (2) be supported by any pertinent precedent decision to establish that the decision was based on an incorrect

application of law or policy, and (3) establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider that does not satisfy these requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

The review of a motion is limited to the basis for the prior adverse decision. The regulation at 8 C.F.R. § 103.5(a)(1)(i) generally requires that the decision a motion seeks to reopen or reconsider must have taken place within the prior 30 days. So we follow the regulations as written and limit our review to the prior decision made within 30 days of filing the motion. We evaluate any new facts, arguments or allegations of error in the application of law or service policy in connection with our decision upon which the current motion was filed. We may only grant a motion that satisfies these requirements and demonstrates eligibility for the benefit sought.

II. ANALYSIS

A. Motion to Reopen

The Petitioner has not provided us with new facts warranting reopening the proceedings here. We interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute the submission of "new facts." The Petitioner's brief encourages us to look beyond our prior decision and expand our examination to encompass the Director's original denial of the petition, the denial of the motion to reopen filed with the Director, and our subsequent appeal dismissals to find the new facts it says support a motion to reopen. We do not have the authority to do that. The regulation generally requires that the decision a motion seeks to reopen or reconsider must have taken place within the prior 30 days and we follow the regulations as written. *See* 8 C.F.R. § 103.5(a)(1)(i).

All parties to a matter deserve an opportunity to be heard. But once proceedings provide that fair opportunity, a strong interest exists to bring the matter to a close. *INS v. Abudu*, 485 U.S. 94, 107 (1988). So a party seeking to reopen the proceedings bears a "heavy burden" of proof. *Id.* at 110.

The Petitioner does not provide any new facts that relate to our decision to dismiss its appeal. The Petitioner submits with their motion a brief repeating the facts it said it submitted in its previous appeal and motion. Facts that are repeated and were provided previously are not "new facts" by definition and we decline to consider them.

B. Motion to Reconsider

A motion to reconsider must state the reasons for reconsideration and that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). The Board of Immigration Appeals generally requires that a motion to reconsider assert an error was made at the time of the previous decision. The very nature of a motion to reconsider is the claim that the original decision was defective in some regard. *See Matter of O-S-G-*, 24 I&N Dec. 56, 57 (BIA 2006).

The Petitioner does not state the reasons for reconsideration, support those reasons with any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy, and establish that the decision was incorrect based on the evidence in the record at the time of the decision. The Petitioner's brief, as stated previously, simply repeats and restates the arguments and documents in support introduced earlier in these proceedings.

Disagreeing with our conclusions without showing that we erred as a matter of law is not a ground to reconsider our decision. *See O-S-G-*, 24 I&N Dec. at 58. The Petitioner has not demonstrated how we erred in our application law or USCIS policy to our decision on the Petitioner's prior motion. So the Petitioner has not shown proper cause for reconsidering our decision on its previous motion.

III. CONCLUSION

The Petitioner should note that the filing of a motion to reopen and/or reconsider does not provide any interim benefits such as staying the execution of any decision or extending a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv). The Petitioner has not demonstrated that we should either reopen the proceedings or reconsider our decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.