U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25238121

Date: JUN. 5, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur, seeks second preference immigrant classification as either an advanced degree professional or 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 EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (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).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not qualify for classification as an individual of exceptional ability, and he had not established a waiver of the required job offer would be in the national interest. We dismissed the appeal, concluding that the Petitioner has not sufficiently demonstrated that his proposed endeavor is of national importance. The matter is now before us on a motion to 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 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.

On motion, the Petitioner submits a brief and contests the correctness of our prior decision. In the motion brief, the Petitioner contends we should not have questioned the employee and sales projections for the planned endeavor since he presented a business plan and "performed this work in Brazil and those projections are based on real-life experience." The Petitioner also states that we failed

to consider the record as a whole. In addition, he asserts that his work has "palpable broader implications," and the letters of support and his prior work experience show that his work affects the industry as a whole.

The current motion brief states that our prior decision lacked thorough analysis; however, the Petitioner did not provide sufficient evidence to support this claim. Regarding the motion to reconsider, we stress again that to establish merit for reconsideration of our latest decision, a petitioner must both state the reasons why it believes the most recent decision was based on an incorrect application of law or policy; and it must also specifically cite laws, regulations, precedent decisions, and/or binding policies it believes we misapplied in our prior decision. 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).

Accordingly, although we acknowledge that the Petitioner submits a brief, we determine that the Petitioner does not directly address the conclusions we reached in our immediate prior decision or provide reasons for reconsidering of those conclusions. Likewise, the brief in support of the current motion also lacks any cogent argument as to how we misapplied the law or USCIS policy in dismissing the appeal. We thoroughly analyzed the Petitioner's evidence and arguments and provided a complete decision reaching the correct conclusion.

In light of the above, we conclude that this motion does not meet all the requirements of a motion to reconsider and must therefore be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

In this matter, the Petitioner has not overcome our prior decision or shown proper cause to reconsider this matter. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.