U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27152483

Date: MAY 17, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks second preference immigrant classification 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).[1]

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not qualify for the EB-2 classification, and that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner subsequently filed an appeal, which we dismissed, concluding that although she established EB-2 classification eligibility as an advanced degree professional, she had not overcome the Director's adverse conclusion regarding her eligibility for a national interest waiver.[2] The matter is now before us on a combined motion 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 to reopen and reconsider.

First, we turn to the motion to reopen, which must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 provides a letter from the chief investment officer and head of investment solutions and trading teams at a Florida investment firm. The letter discusses the Petitioner's experience in overseeing assets of "ultra-high-net-worth and high-net-worth individuals throughout

[1] After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as a 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).

[2] Although the Petitioner claimed eligibility for EB-2 visa classification as both an advanced degree professional and as an individual possessing exceptional ability, we determined that the Petitioner met the requirements of the former and declined to address her assertions regarding the latter, deeming them moot.

Brazil and Latin America" and highlights the Petitioner's "critical" role in ensuring that the United States continues to receive foreign investments. However, the letter does not offer new facts about the prospective impact of the Petitioner's proposed endeavor, nor does it address the chief basis for our prior decision, where we determined that the Petitioner "significantly changed her proposed endeavor" and did not adequately explain how she would allocate her time between the services of her initially stated endeavor and the activities that were newly presented in the response to the Director's request for evidence (RFE) and reiterated on appeal. Namely, we noted that at the time of filing, the Petitioner stated that her endeavor would be to work as a financial operations director at established U.S. companies, but in the RFE response, she stated that she would work as the director of operations in her own company, where, in addition to providing financial services to clients, she would also provide administrative and managerial oversight of her own business, which she established more than one year after filing the instant petition. We dismissed the appeal, concluding that the Petitioner presented a new set of facts regarding the proposed endeavor, thus making a material change to a filed petition. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971) (requiring that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition). Nothing on motion addresses or overcomes this issue.

Next, we turn to the Petitioner's motion to reconsider, which 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 states that we did not consider certain previously submitted evidence. The Petitioner asserts that "those documents were not properly analyzed by the Service, violating the Fourth Amendment of the Constitution of the United States of America."[3] The Petitioner asks that we "reconsider the adverse decision and reopen [the petition], considering that [we] did not give due regard to all the pieces of evidence presented."

When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the Petitioner presents. *Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992); *see also Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993). Here, the Petitioner does not address our specific determinations and conclusions or establish that they were in error; rather, she relies primarily on vague and general assertions that we disregarded evidence. Further, the Petitioner does not establish that our appellate decision was incorrect, and the vague assertions do not oblige us to readjudicate the appeal de novo. Although the Petitioner lists several previously submitted documents that she claims we did not properly analyze in our appellate review of the record, she does not explain how discussion or consideration of those materials would have changed the outcome of our appellate decision. And although the Petitioner argues that we "disregarded the fact that [she] is a highly skilled STEM professional," she offers no explanation as to

[3] The Fourth Amendment prohibits "unreasonable searches and seizures." U.S. Const. amend. IV. The Petitioner appears to mean the Fifth Amendment, which guarantees "due process of law." U.S. Const. amend. V.

basis for this argument nor does she offer evidence in support thereof. 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 sum, the Petitioner has not established new facts sufficient to overcome our previous decision. Nor has the Petitioner established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Consequently, the Petitioner has not met the applicable requirements for either a motion to reopen or a motion to reconsider. The motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.