U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27229343

Date: MAY 30, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner sought classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability in the sciences, arts or business. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also sought a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. See section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that the endeavor required either an advanced decree or exceptional ability, that the Petitioner has an advanced degree or exceptional ability, and that a waiver of the required job offer would be in the national interest. We dismissed a subsequent appeal finding that although the proposed endeavor required an advanced degree or exceptional ability, the record did not establish that the Petitioner has an advanced degree or exceptional ability. 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 combined motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." 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. See Matter of Coelho, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). We incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion.

On motion, the Petitioner submits a brief with broad assertions that the Director's denial "is contrary to law or policy, and unsupported by the evidence in the record." The Petitioner states that USCIS "did not give due regard to all the pieces of evidence presented by the Petitioner" with the filing of the petition and in her reply to the request for evidence. The Petitioner relies on the evidence in the record contending USCIS violated the fourth amendment of the U.S. Constitution by not properly analyzing the submitted evidence. No further documentation was submitted with the brief.

The motions before us do not provide for reopening or reconsideration of the Director's denial, but rather pertains to our most recent appeal decision. We examine new arguments to the extent that they pertain to our prior decision to dismiss the Petitioner's appeal. We cannot consider new objections to the Director's denial, and the Petitioner cannot use the present motions to make new allegations of error at stages of the proceeding prior to our appeal decision. Here, the Petitioner alleges a general error in the Director's decision but does not identify any specific error of law or fact in our prior decision.

On motion to reopen, the Petitioner has not stated new facts or submitted additional evidence in support of the motion. The Petitioner's motion relies on evidence in the record. Therefore, the Petitioner has not shown proper cause for reopening the appeal decision. 8 C.F.R. § 103.5(a)(3).

On motion to reconsider, the Petitioner has not asserted that our appeal decision was based on an incorrect application of law or policy at the time we issued our decision. The Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusion and generally arguing USCIS did not give full consideration to the evidence. 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). The Petitioner's assertions lack specificity required for a motion to reconsider.

The Petitioner has not established that we misapplied any law or policy in our prior decision, and therefore does not meet the requirements of a motion to reconsider. 8 C.F.R. § 103.5(a)(3). Therefore, the motion does not meet the requirements of a motion to reconsider. 8 C.F.R. § 103.5(a)(4).

The Petitioner has not demonstrated that we should either reopen the proceedings or reconsider our appellate decision. Therefore, the combined motions to reopen and reconsider will be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.