U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29751831

Date: JAN. 5, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a financial specialist, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks 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 Petitioner qualifies for the national interest waiver. 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.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, the Petitioner does not state any new facts and does not submit any new documentary evidence. Therefore, the motion does not meet the requirements of a motion to reopen and must be dismissed.

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 contests the correctness of our prior decision, stating that we did not consider all the evidence that the Petitioner had submitted with the petition and, later, in response to a request for evidence. The Petitioner asserts that "those documents were not properly analyzed by [USCIS], violating the Fourth Amendment of the Constitution of the United States of America."[1] The Petitioner asks that we "reconsider the adverse decision, reopen [the petition], and give full consideration to all the submitted documents."

The only decision properly before us on motion is our July 2023 appellate decision, not the Director's December 2022 denial of the petition. *See* 8 C.F.R. § 103.5(a)(1)(i), which limits the available time to file a motion to reconsider and requires that motions pertain to "the prior decision," which in this case is our July 2023 appellate decision.

In our appellate decision, we referred to the Petitioner's arguments and quoted from a business plan in the record. We observed that the Petitioner appeared to have materially changed his proposed endeavor in response to a request for evidence, and we concluded that the Petitioner had not established how his proposed endeavor, as originally stated at the time of filing, has broader implications beyond benefit to his employers and customers.

On motion, the Petitioner does not address our specific determinations and conclusions or establish that they were in error. Instead, the Petitioner makes vague and general assertions that we disregarded unspecified evidence. Such assertions do not establish that our appellate decision was incorrect, and do not oblige us to readjudicate the appeal de novo. The Petitioner does not identify any specific documents or other pieces of evidence that we overlooked in our appellate review of the record, and the Petitioner does not explain how discussion or consideration of those materials would have changed the outcome of our July 2023 decision.

For the reasons discussed, 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, we will dismiss the motion. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[1] 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.