U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20164240

Date: JULY 14, 2022

Motion on Administrative Appeals Office Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

The Petitioner seeks to employ the Beneficiary under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both: (a) the theoretical and practical application of a body of highly specialized knowledge; and (b) the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The California Service Center Director denied the Form I-129, Petition for a Nonimmigrant Worker, concluding that the Petitioner did not establish the proffered position qualified as a specialty occupation, and that the Beneficiary was not qualified for the position. We dismissed the Petitioner's appeal on the specialty occupation basis, and we dismissed a subsequent motion filing because it was not filed timely (it was filed 249 days after our appeal dismissal), and a second motion because the Petitioner did not satisfy the requirements of a motion to reopen or a motion to reconsider. The matter is before us again on a motion to reconsider. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss this motion.

A motion to reconsider 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).

For the reasons discussed below, we determine that the Petitioner has not overcome our reasoning within the most recent motion decision by establishing the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. This is the primary requirement for a motion to reconsider.

I. PROCEDURAL SHORTCOMING

As an initial issue, the regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires that a motion must be accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding. We note that the Petitioner did not submit a statement relating to this mandate. Pertaining to this shortcoming, the regulation at 8 C.F.R. § 103.5(a)(4) requires that a motion that does not meet applicable requirements shall be dismissed. As the Petitioner did not provide the required statement, the regulation provides that the motion must be dismissed.

II. MOTION TO RECONSIDER

Even if the procedural failure noted above was not present in this case, we would still dismiss the motion. A motion to reconsider must state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). We offer the timeline of events:

- May 13, 2019: the Director denied the petition;
- June 14, 2019: the Petitioner filed the appeal;
- February 20, 2020: we dismissed the appeal;
- October 27, 2020: the Petitioner filed the first motion;
- February 19, 2021: we dismissed the first motion because it was not timely filed;
- April 23, 2021: the Petitioner filed the second motion;
- July 27, 2021: we dismissed the second motion for failure to satisfy the motion requirements;
- August 30, 2021: the Petitioner filed this motion.

In response to the COVID pandemic, USCIS implemented flexible filing times noting: "USCIS will consider a response received within 60 calendar days after the due date set forth in the following requests or notices before taking any action, if the issuance date listed on the request or notice is between March 1, 2020, and July 25, 2022 . . . ." USCIS Alert, *USCIS Extends Flexibility for Responding to Agency Requests* (Mar. 30, 2022), https://www.uscis.gov/newsroom/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-1.

On motion, the Petitioner argues that even though the first motion was filed outside the agency's COVID flexibility parameters, those flexibilities went into effect only one week from the date in question and we should extend the COVID flexibilities even further to apply to this case. However, the Petitioner does not offer any legal resource or authority in support of that contention. Nor does the Petitioner persuade us that adhering to the COVID flexibility dates the agency put in place was erroneous, which is a primary requirement for a motion to reconsider. Simply disagreeing with our conclusions without showing that we erred as a matter of law or pointing to policy that contradicts our analysis of the evidence is not a ground to reconsider our decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006).

The Petitioner's motion does not meet the applicable requirements of a motion to reconsider because it did not establish our decision was based on an incorrect application of law or policy. *See* 8 C.F.R. § 103.5(a)(3). As it did not demonstrate that we incorrectly dismissed his second motion, the Petitioner

did not establish that it meets the requirements of a motion to reconsider. Therefore, we will dismiss the motion to reconsider.

ORDER: The motion to reconsider is dismissed.