U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33874465

Date: SEP. 9, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a cosmetologist, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner is eligible for a waiver of the job offer requirement in the national interest. We summarily 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). 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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (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).

The most recent decision, which the Petitioner contests with these motions, was our summary dismissal of his appeal. We acknowledged that the Petitioner filed a brief along with previously submitted evidence and requested that we approve the petition. We carefully reviewed and considered his appellate submission. We determined that his brief pointed to the same evidence already in the record and generally reiterated his claims presented before the Director that his endeavor meets all three prongs of *Dhanasar*. The Petitioner did not contest the findings in the Director's denial or claim any erroneous conclusion of law or statement of fact in the Director's decision. Accordingly, we summarily dismissed his appeal.

We summarily dismissed the Petitioner's appeal because even though he discussed his qualifications for a national interest waiver, that discussion was very similar to the arguments he presented before the Director. Our summary dismissal importantly noted the Petitioner did not address the specific findings in the Director's decision, nor did his brief claim any erroneous conclusion of law or statement of fact in the Director's decision. Those are grounds for a summary dismissal under the regulation at 8 C.F.R. § 103.3(a)(1)(v) as well as before the Board of Immigration Appeals (BIA). Summary dismissal of an appeal is appropriate when the filing party only asserts the underlying trier of fact came to the wrong conclusion or expresses general disagreement with the lower decision and "fails to specify the reasons for the appeal." *Matter of Valencia*, 19 I&N Dec. 354, 355–56 (BIA 1986); *Matter of Davis*, 20 I&N Dec. 536, 537–38 (BIA 1992); *Matter of Keyte*, 20 I&N Dec. 158, 159 (BIA 1990); *Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988); *Matter of Lodge*, 19 I&N Dec. 500, 501 (BIA 1987); *Matter of Holguin*, 13 I&N Dec. 423, 425 (BIA 1969). Where a question of law is presented, supporting authority should be included, and where the dispute is on the facts, there should be a discussion of the details contested. *Valencia*, 19 I&N Dec. at 355.

On motion, the Petitioner asserts that the Director's decision was incorrect for multiple reasons. However, the matters the Petitioner must first overcome within this motion are limited to the issues discussed within our most recent decision, the appeal's summary dismissal. General support that a motion must first overcome the most recent decision lies within the regulation at 8 C.F.R. § 103.5(a)(1)–(3) where it repeatedly discusses the underlying or latest decision, it limits the time one has to file a motion after the most recent decision, and it references jurisdiction resting with the entity who made the latest decision. This demonstrates that any motion must first address and overcome the most recent adverse decision before the filing party's arguments may move on to any issue that arose in a previous petition, appeal, or motion filing. Because the Petitioner's eligibility for the national interest waiver was not an element in our most recent decision, we will not consider that aspect in these motions.

The Petitioner briefly refers to our prior decision. He states that we erred in determining that he was just restating his case, and further states that we ignored his appeal which included more background and analysis on how he merits a national interest waiver. However, the Petitioner does not address our determination that his appeal did not address the specific findings in the Director's decision and did not claim any erroneous conclusion of law or statement of fact in the Director's decision. The Petitioner has not overcome our reasoning in his appeal's summary dismissal. Based on the record, the Petitioner has not established that he meets the requirements of a motion to reopen or a motion to reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.