U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29116936

Date: DEC. 04, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or 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 Petitioner did not establish that he qualified for the EB-2 classification as either an advanced degree professional or as an individual of exceptional ability. In addition, the Director determined that the Petitioner did not merit, as a matter of discretion, a 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 motions.

A motion to reopen 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

In our decision on the Petitioner's appeal, we noted that he incorrectly stated that the Director found him to be eligible for the EB-2 classification as a member of the professions holding an advanced degree. As the Petitioner did not challenge the Director's actual decision regarding the EB-2 classification, which found him ineligible as both an advanced degree professional and an individual of exceptional ability, we determined that the Petitioner had waived that issue. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). Because the Petitioner was not, therefore, eligible for the underlying immigrant classification, we concluded that we need not consider his eligibility for a national interest waiver.

With his motion, the Petitioner submits new work experience letters, three job offer letters, a letter from the Hispanic Chamber of Commerce of [redacted] and several documents which appear to be in the Portuguese language and are not accompanied by English translations.[1] The Petitioner asserts that these new facts establish his eligibility as an individual of exceptional ability.

However, as stated above, our review on motion is limited to reviewing our most recent decision. Here, in our appellate decision we concluded that the Petitioner waived his claim as an individual of exceptional ability, and the Petitioner does not challenge that decision on motion. Because the new documents the Petitioner has submitted relate to his eligibility as an individual of exceptional ability, an issue that was waived on appeal, we will not consider them on motion.[2] Accordingly, he has not presented new facts which establish his eligibility for the requested benefit, and his motion to reopen will 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 does not contest the correctness of our prior decision. Specifically, he does not challenge our determination that he waived the issue of this eligibility for the EB-2 classification, or cite to law or policy showing that the determination was incorrect based upon the record. Instead, he focuses entirely on the Director's decision, arguing that he meets four additional criteria under 8 C.F.R. § 204.5(h)(3)(ii). As the Petitioner has not established that our appeal decision was based on an incorrect application of law or policy and was incorrect based on the evidence in the record at the time of the decision, we will dismiss his motion reconsider.[3]

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

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[1] Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that they are competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of these documents as required, we accord them no weight as we cannot determine whether they support his claims.

[2] We note generally that the new documents do not support the Petitioner's claim as an individual of exceptional ability. In addition to those which are not translated, other documents relate to facts which occurred after the Petitioner's filing of his petition. This includes the evidence of his membership in the Hispanic Chamber of Commerce of [redacted] and the job offer letters. A petition may not be approved at a future date after the petitioner or beneficiary becomes eligible based on a new set of facts. Any new facts submitted on motion must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1); *see also Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm'r 1971).

[3] We note generally that the Petitioner spends several paragraphs asserting that the Director should have considered the reference letters he submitted as evidence that he meets the evidentiary criterion relating to his membership in professional associations. However, none of the reference letters in the record at the time of the Director's decision were from individuals representing the professional association of which the Petitioner asserted he was a member. Further, the Director did not make the statements dismissing those letters in their decision that the Petitioner attests they made.