U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28895709

Date: NOV. 8, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a sales director, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability in the sciences, arts or business, 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 had not established eligibility for EB-2 classification as an individual of exceptional ability. We dismissed the subsequent appeal and a combined motion to reopen and reconsider. The matter is now before us on a second motion to reconsider.

A motion to reconsider must establish that our 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). The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reconsider to instances where the applicant has shown "proper cause" for that action. Thus, to merit reconsideration, an applicant must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but must also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

By regulation the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). The issue before us is whether the Petitioner has established that our decision to dismiss the prior combined motions was based on an incorrect application of law or USCIS policy. We therefore incorporate our prior decisions by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion.

On motion to reconsider the Petitioner states that the Director "did not give full consideration to the evidence provided by the Petitioner along with the first filing and the RFE response, as it should have been given." Specifically, the Petitioner states that an expert opinion letter "that outlines [the] Petitioner's qualifications and all the benefits generated by his proposed endeavor in the United States was not even considered by the adjudicating officer."

In our prior dismissal of the Petitioner's combined motions, we stated:

> [ ] a motion to reconsider pertains to our most recent decision. In other words, we examine any new arguments to the extent that they pertain to our prior dismissal of the Petitioner's appeal. Therefore, we cannot consider new objections to the earlier denial, and the Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding. 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.

The above remains true for the motion to reconsider before us. The Petitioner again alleges an error in the Director's decision but does not allege any error of law or fact in our prior decision.[1] As noted in our prior decision, the Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; the motion must demonstrate how we erred as a matter of law or policy. *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).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not shown that our prior decision contained errors of law or policy, or that the decision was incorrect based on the record at the time of that decision. Therefore, the motion does not meet the requirements of a motion to reconsider and must be dismissed.

ORDER: The motion to reconsider is dismissed.

[1] For the first time in its second motion the Petitioner describes the alleged error as not considering an expert opinion letter.