U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30668310

Date: APR. 8, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the record did not establish that the Petitioner merits a discretionary waiver of the job offer requirement in the national interest.

We dismissed the Petitioner's appeal of the Director's denial decision. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) 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 the motions.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). According to the Instructions for Notice of Appeal or Motion (Form I-290B, Notice of Appeal or Motion), any new facts and documentary evidence must demonstrate eligibility for the required immigration benefit at the time the application or petition was filed. A motion to reopen that does not satisfy the applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

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).

II. ANALYSIS

When we dismissed the Petitioner's appeal, we laid out his statements regarding his proposed endeavor asserted in both the initial filing and in response to the Director's request for evidence, and we incorporate them here by reference.

The Director determined the Petitioner made a material change to his claims relating to his proposed endeavor, which precluded him from adequately demonstrating what his endeavor would actually consist of because significant alterations were impermissible. When we adjudicated his appeal, we agreed with the Director that the amendment the Petitioner made was of such a nature that it was a prohibited material change under *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998) (finding that a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements). We further noted that in the appeal, the Petitioner failed to address or refute the Director's determination regarding a material change. Based on that shortcoming, we cited *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) and determined he therefore waived or abandoned that issue in the appeal.

And here within the motions, the Petitioner again does not address the material change aspect. Because the Petitioner has abandoned one dispositive issue within the Director's decision, even if we agreed with every argument he included in his motion and his appeal briefs, the end result would remain the same and his petition would remain denied. In other words, after abandoning the dispositive issue, the Petitioner's ability to prevail and receive a favorable decision for the petition before us became effectively impossible. The Petitioner is, however, free to submit any new arguments and evidence with a new petition.

Because the identified basis included in both the petition's denial and the appeal's dismissal are dispositive of these motions, we will not address and we reserve the Petitioner's remaining motion arguments. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of Chen*, 28 I&N Dec. 676, 677 n.1, 678 (BIA 2023) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

In conclusion, the Petitioner has not submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal, nor has he established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy and that the decision was incorrect based on the evidence in the record of proceeding at the time of the decision.

III. CONCLUSION

The Petitioner has not demonstrated that we should either reopen the proceedings or reconsider our decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.