U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 24584355

Date: JAN. 10, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a mathematics teacher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We summarily dismissed her appeal and three subsequent motions. In our most recent decision, we determined that the Petitioner did not present a new fact supported by documentary specifically relating to the dismissal of her previous motion to reopen. The matter is before us again on a fourth combined motion to reopen and motion to 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). 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). As noted above, we dismissed the prior motion to reopen because the Petitioner did not present a new fact to reopen the proceeding. Specifically, the Petitioner provided documents relating to events occurring after the initial filing of the petition. A petitioner must establish eligibility at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). Moreover, the Petitioner did not show how the evidence addressed the prior decision, the dismissal of the second motion.[1]

[1] As indicted in our previous decision, the Petitioner's evidence also did not address our prior motion dismissals and the original basis for summarily dismissing her appeal – the failure to identify specifically any erroneous conclusion of law or statement of fact in the Director's decision when she submitted her appeal, or within the brief submission period. *See* 8 C.F.R. § 103.5(a)(1)(i).

The review of any motion is narrowed to the basis for the prior adverse decision. Accordingly, we will examine any new facts and arguments to the extent that they pertain to our most recent decision, the dismissal of the third motion. The Petitioner presents a letter stating that she "strongly believe[s] that [her] motion to reopen and reconsider is based on new evidence with the specific proposed endeavor that is of national importance and national in scope to qualify [her] for a national interest waiver." In addition, the Petitioner summarizes her project proposal and highlights some of her recent teaching awards. Further, the Petitioner submits her project proposal entitled, "Creating a STEM Sanctuary Garden," copies of letters discussing her proposal, copies of awards, and a January 21, 2002 U.S. Citizenship and Immigration Services (USCIS) Policy Alert entitled, "National Interest Waivers for Advanced Degree Professionals or Persons of Exceptional Ability" (PA-2022-02).

The Petitioner does not demonstrate a new fact supported by documentary evidence for the fourth motion, as required by 8 C.F.R. § 103.5(a)(2). For the same reasons in dismissing her last motion to reopen, the Petitioner submits documentary evidence relating to events occurring after the initial filing of the petition. *See* 8 C.F.R. § 103.2(b)(1). Furthermore, the Petitioner does not show how the evidence addresses or overcomes the prior decision dismissing her motion to reopen. Again, before we address the merits of the petition, the Petitioner must overcome our previous motion dismissals and the basis for summarily dismissing her appeal, which she has not done.

The Petitioner also does not identify a law or policy that we have incorrectly applied in our most decision dismissing the third motion under 8 C.F.R. § 103.5(a)(3). Although the motion brief asserts that "the Petitioner submits her personal statement containing her reasons about why her case must be reopened," the Petitioner does not establish that we erroneously applied law or policy in dismissing her motion to reopen. Neither the Petitioner's letter nor her brief explain how we erroneously dismissed her third motion. Instead, they discuss her most recent proposed endeavor without addressing the specific determinations in our last decision.

The fourth combined motion to reopen and motion to reconsider does not include new information or evidence that overcomes the grounds underlying our decision dismissing her third motion and does not show that our previous decision was based on an incorrect application of law or policy.

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.