U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25334886

Date: MAR. 7, 2023

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for a Professional

The Petitioner, a provider of financial consulting services, seeks to employ the Beneficiary as an accountant. The company requests his classification under the third-preference, immigrant visa category for professionals. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii).

The Director of the Texas Service Center initially approved the petition, but subsequently revoked the approval, concluding that the Petitioner and Beneficiary concealed family relationships between the Beneficiary and the company's principals and that the Petitioner did not demonstrate the availability of the offered position to U.S. workers. The Director also dismissed the following motion to reopen, concluding that the Petitioner did not demonstrate that its delay in filing the motion was reasonable and beyond its control. We dismissed the Petitioner's appeal and its subsequent combined motion to reopen and motion to reconsider. The matter is before us again on a second 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 motion.

I. LAW

A motion to reconsider is based on an incorrect application of law or policy to the prior decision, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

As noted above, the Director revoked his previous approval of this petition. In our decision on appeal, we concluded that the Director provided adequate notification of that revocation, and that the Petitioner had not demonstrated that its delay in filing a motion to reopen that revocation decision,

filed more than 15 months later, was reasonable and beyond its control. In dismissing the Petitioner's subsequent motion, we concluded that the company had not presented new facts relevant to our appellate decision that would warrant reopening of the proceedings.[1] We also determined that the Petitioner had not established that our appellate decision was based upon an incorrect application of law or U.S. Citizenship and Immigration Services' (USCIS) policy, or that it was incorrect based upon the record at the time the decision was made.[2]

A. Motion to Reopen

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits U.S. Citizenship and Immigration Services' (USCIS) authority to reopen to instances where an applicant has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, an applicant must not only meet the formal filing requirements at 8 C.F.R. § 103.5(a)(1)(iii) (such as submission of a properly completed and signed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. Specifically, a motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2).

The Petitioner's current motion contests the Director's revocation decision's material misrepresentation finding. The Petitioner states that the present "motion is filed to demonstrate there is neither a factual nor a legal basis for an INA § 212(a)(6)(C)(i) finding against [the Beneficiary]." It argues that the Director's revocation decision also failed to properly make its misrepresentation finding against the Petitioner. With the motion, the Petitioner submits a copy of the Beneficiary's Form I-485 "Supplement J, Confirmation of a Bona Fide Job Offer or Request for Job Portability under INA Section 204(j)." This form was accompanied by an attachment challenging the Director's revocation decision and attesting to the Beneficiary's admissibility.

The issue here is whether the Petitioner has submitted new facts, supported by documentary evidence, to warrant reopening. *See* 8 C.F.R. § 103.5(a)(2). And the matters the Petitioner must first overcome within this motion are limited to the issues discussed within our most recent decision; the August 2022 dismissal of the motion to reopen and the motion to reconsider. General support that a motion must

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[1] We determined that the Petitioner's member's statement regarding the timeline of the company's relocation and its efforts to have its mail forwarded was not material to the issue of whether USCIS provided adequate notice of the revocation to the Petitioner. As noted in one of the USCIS webpage printouts submitted with the motion, changing an address with the U.S. Postal Service will not change the address with USCIS. The member's statement also reiterated arguments made on appeal that the Petitioner's delay in filing its initial motion to reopen was reasonable since it filed the motion as soon as it learned of the revocation. As these claims had already been presented, we concluded that the Petitioner's motion to reopen did not state new facts, and therefore it did not meet the requirements at 8 C.F.R. § 103.5(a)(2).

[2] We stated that USCIS resources stress the importance of updating addresses, with the DHS Ombudsman website indicating that "[i]t is the sole responsibility of the applicant/petitioner to ensure USCIS has the correct address information on file." We indicated the Petitioner had not shown that our prior decision that the untimely filing of its initial motion to reopen was not reasonable or beyond its control was incorrect. 8 C.F.R. § 103.5(a)(1). Our decision further noted that the regulation at 8 C.F.R. § 103.5(a)(1) states that USCIS has discretion to excuse the untimely filing of a motion to reopen where a petitioner demonstrates "that the delay was reasonable and beyond [its] control." It does not require, as the Petitioner suggested, that USCIS consider whether the Petitioner would have timely a filed motion to reopen the revocation of its petition if it would have received the notice. Our decision also explained that each benefit request creates its own, separate record of proceeding, and officers are expected to consider that record only when adjudicating a petition or application. *See 1 USCIS Policy Manual* E.2. Finally, we pointed to USCIS public guidance which indicated that it is the Petitioner's responsibility to update its address with USCIS.

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.

In this case, the Petitioner has not provided new facts in order to warrant reopening our latest decision. Instead, the Petitioner contends that the Director's finding of misrepresentation in the revocation decision was not supported by law or fact. We conclude that the Petitioner's motion to reopen does not state new facts to overcome the grounds for dismissal set forth in our most recent decision, and therefore fails to meet the requirements at 8 C.F.R. § 103.5(a)(2).

B. 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 Petitioner asserts that the Director's revocation decision erred in finding the Beneficiary inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. It also contends that the Director did not present sufficient facts to support the inadmissibility finding. The Petitioner's arguments, however, do not demonstrate how we incorrectly applied law or policy in our latest decision. The review of any motion is narrowly limited to the basis for the prior adverse decision. Accordingly, we examine any new arguments to the extent that they pertain to our dismissal of the Petitioner's prior motion.[3] Thus, the issue before us is whether we erred in applying law or policy in our August 2022 decision. Because the Petitioner has not provided any arguments relating to our most recent decision, the Petitioner has not shown that we incorrectly applied law or policy in our latest decision based on the record before us.

The Petitioner therefore has not met the requirements for a motion to reconsider as it has not shown that we erred in our prior decision based on the record before us at the time of the decision. In addition, the present motion to reconsider does not establish that our latest decision was based on an incorrect application of law, regulation, or USCIS policy.

III. CONCLUSION

The Petitioner has not demonstrated that we erred as a matter of law or USCIS policy, nor has it established new facts relevant to our prior decision that would warrant reopening of the proceedings. Consequently, we have no basis for reopening or reconsideration.

[3] The prior motion was filed in November 2021.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.