U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21025876

Date: JUNE 13, 2022

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an assistant professor of international studies, 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). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but 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. Specifically, although the Director found that the proposed endeavor has both substantial merit and national importance, the Director concluded that the record did not establish that the Petitioner is well-positioned to advance the proposed endeavor, or that a waiver of the job offer, and thus of the labor certification, would be in the national interest.

We dismissed a subsequent appeal, first withdrawing the Director's conclusion that the proposed endeavor would have national importance, then concluding that the record did not satisfy the first two *Dhanasar* prongs, reserving our opinion on the third *Dhanasar* prong. *See Dhanasar*, 26 I&N Dec. at 888-91. On motion to reconsider, the Petitioner asserts that we misapplied *Dhanasar* and that the preponderance of evidence satisfies the *Dhanasar* prongs.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion to reconsider.

I. LAW

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). We do not consider new facts or evidence in a motion to reconsider.

II. ANALYSIS

As noted above, we withdrew the Director's conclusion that the proposed endeavor would have national importance. Specifically, we noted that, although the record indicates the endeavor would entail the Petitioner working, partly, as an assistant professor in international studies and, partly, as an international relations researcher, it does not establish how much time she will devote to teaching, as opposed to conducting research. We concluded that, to the extent that the endeavor would entail teaching international relations, "the record does not establish by a preponderance of the evidence that such activities would impact the field of international relations more broadly, as opposed to being limited to the specific students and university she may serve." We noted that, similarly, we concluded the petitioner in *Dhanasar* did not establish by the preponderance of the evidence that his proposed teaching activities meet the national importance element of the first prong. *See Dhanasar*, 26 I&N Dec. at 893.

We further noted that the record does not establish how much time the Petitioner intends to devote to research while also pursuing her consulting, analyst, peer review, and editorial board activities. We noted that the record does not establish how the Petitioner's research is "state-of-the-art" or how it provides "novel insights," given that the record establishes "that many others study, publish, and offer their research-based perspectives on similar topics" to those published by the Petitioner. We also observed that the record does not contain documentary evidence to support assertions that the Petitioner's research has been funded by the Defense Department's U.S. Southern Command. We further observed that the few letters of recommendation that address the Petitioner's future research plans provide generalized and unsubstantiated descriptions, such as "groundbreaking," "influential," and "innovative," without elaborating on how the proposed endeavor would break new ground, influence the field of international relations research, and provide innovations that rise to the level of national importance. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). Because the record does not establish that the Petitioner's international relations teachings would rise to the level of national importance, and because the record does not establish that the Petitioner's international relations research would rise to the level of national importance, we withdrew the Director's finding to the contrary.

On motion to reconsider, the Petitioner states that she provided her proposed endeavor in her personal statement, submitted in support of the petition: "In the coming years, I intend to extend my research on [redacted] foreign policy to support civil society as the cornerstone of improved maintenance of public affairs in emerging societies and countries." The Petitioner adds that, in that statement, she further stated that her research would use "new and more advanced approaches to obtain a proper database of [redacted] segmented by media, topic, target audience, and reach, that greatly improves the works of all analysts studying [redacted]." The Petitioner

further asserts on motion that "specific details of [the Petitioner's] employment pursuits or future activities, whether she is employed as an assistant professor, adjunct professor, or international relations researcher" are irrelevant to the issue of determining whether the proposed endeavor would have national importance. The remainder of the motion's discussion of the first *Dhanasar* prong characterizes aspects of our prior analysis as irrelevant.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The only evidence of record that the Petitioner discusses, on motion to reconsider, is her own one-page personal statement submitted in support of the petition. Otherwise, the Petitioner cites the appeal dismissal notice, *Dhanasar*, and a non-precedent decision from 2018.[1] Without more, the Petitioner's statement, quoted above, does not provide sufficient details, corroborated by objective evidence, to establish how the proposed research endeavor would have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *See id.* at 889-90. Accordingly, the motion to reconsider does not establish that the proposed endeavor would rise to the level of national importance under the preponderance of evidence standard and that we erred by withdrawing the Director's conclusion to the contrary. *See id; see also Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

Because the Petitioner has not established on motion that our decision was incorrect based on the evidence in the record of proceedings at the time of the decision, we will dismiss the motion to reconsider. *See* 8 C.F.R. § 103.5(a)(3), (4). Further, because the Petitioner has not satisfied the first *Dhanasar* prong on motion, we need not address whether she has satisfied the second and third *Dhanasar* prongs, and we hereby reserve them. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

[1] The Petitioner refers to our non-precedent decision, specifically quoting its statement that our analysis of a proposed endeavor "is not limited by a petitioner's occupation or educational status at the time of filing" and that "we consider [petitioners'] current and prospective job offers in this analysis only as they illustrate the capacity in which [they intend] to work." This decision was not published as a precedent and therefore does not bind U.S. Citizenship and Immigration Services officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. In the Petitioner's case, in our prior decision we considered the Petitioner's current and prospective jobs in the context of the extent to which they may illustrate the capacity in which she intends to work—teaching international relations, researching international relations, or a combination of the two.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The motion to reconsider is dismissed.