U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28233260

Date: AUG. 29, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a human resources manager, seeks employment-based second preference (EB-2) 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 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 did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and 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

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[1], grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- On balance, waiving the job offer requirement would benefit the United States.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii).[2] We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

A motion to reconsider must establish that our prior 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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

II. ANALYSIS

A. Motion to Reopen

In our decision on appeal, we agreed with the Director and determined that the Petitioner had not established that her proposed endeavor was of national importance, and thus did not meet the first prong of the *Dhanasar* analytical framework. On motion, the Petitioner submits three reference letters and a copy of her personal or business plan. The Petitioner asserts that these documents establish her eligibility, as they show that her proposed endeavor of starting a human resources management company will have national importance by directly and indirectly creating new employment and having substantial economic effects.

When reviewing motions to reopen, we do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean those that are material to the issues to the issues raised on motion and that have not been previously submitted in the proceeding. Reasserting previously stated facts or resubmitting previously submitted evidence does not constitute "new facts."

Here, the personal or business plan the Petitioner submits with the motion was previously submitted in response to the Director's request for evidence (RFE), and therefore does not present new facts and does not meet the requirements for a motion to reopen. Accordingly, it will not be considered.

Regarding the three reference letters with the motion to reopen, we note that two of them were submitted with the Petitioner's appeal but not considered, as we determined in that decision that evidence regarding the national importance of her endeavor had already been requested by the Director in his RFE, with the Petitioner given ample time to respond. The Petitioner now asks that we consider these two letters since they were "not recognized in the appeal phase."

[2] The Petitioner states that her motion to reopen is addressed to the Director of the Texas Service Center, while her motion to reconsider is addressed to us at the Administrative Appeals Office. As jurisdiction for a motion is held by the official who made the most recent decision in a proceeding, we will address both motions. 8 C.F.R. § 103.5(a)(1)(ii).

However, all three letters discuss the Petitioner's previous work and accomplishments, and thus do not address the national importance of her proposed endeavor, which is prospective in nature. [redacted], owner of a supermarket chain in Brazil, had discussed the Petitioner's work for his company in the areas of labor and tax law in an earlier letter, and now discusses other tax issues and a program for the hiring of those with disabilities which the Petitioner implemented. [redacted], a lawyer and entrepreneur, discusses the Petitioner's work for him in recruiting other lawyers to a legal services network and providing litigation case management services. And in a new letter, [redacted] writes about her experience as one of the Petitioner's employees.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. As with the reference letters discussed in our decision on appeal, these letters focus on the Petitioner's previous activities as an attorney and an employer, issues which are appropriately considered under the second prong of the *Dhanasar* analytic framework when considering whether she is well positioned to advance her proposed endeavor. None of this evidence addresses our determination that her proposed human resources management business would not have broader implications in the field beyond its clients.

We note that the Petitioner also copies into her brief several pages and charts from the website of the United States Bureau of Labor Statistics regarding workplace injuries and illnesses, asserting that "it is evident that investment in employee health has repercussions at the national level, considering economic factors of public expenditure and the preservation of public health as a form of social investment across the country." While occupational health and safety is of national importance, this evidence does not show how the Petitioner's specific proposed endeavor of starting and managing a human resources consulting business would have broader implications in this field, beyond that of the specific clients it would serve.

For the reasons given above, the Petitioner has not established her eligibility for under the first prong of the *Dhanasar* analytical framework, and thus is not eligible for a national interest waiver.

B. Motion to Reconsider

A motion to reconsider must establish that our prior 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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

In her brief, the Petitioner does not assert that our appeal decision was based upon an incorrect application of law or policy, nor does she support her argument with pertinent precedent decisions or supporting statutes, regulations, or policies. Rather, she reargues her eligibility under the first prong by focusing on the evidence of her previous work in the legal, human resources, and occupational safety fields, asserting that the national importance of her proposed endeavor "is found in the countless success stories that I have collected over a career spanning more than a decade." She also extensively refers to the occupational health and safety statistics mentioned above in asserting the national importance of her proposed endeavor, but a motion to reconsider must establish that our previous

decision was incorrect based upon the evidence of record at the time of that decision. We do not consider new facts or evidence in a motion to reconsider.

III. CONCLUSION

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not her established eligibility under the first prong of the *Dhanasar* framework. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.