U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37488451

Date: APR. 02, 2025

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 a member of the professions holding an advanced degree or as an individual of exceptional ability, 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 eligibility for the underlying immigrant classification. We dismissed the Petitioner's appeal and a subsequent motion. 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 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 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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). 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).

In our decision dismissing the previous motion, we agreed with our appellate decision that the Petitioner did not meet the first prong of the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). We explained that the Petitioner had not demonstrated the national importance of her initial proposed endeavor.

On motion, the Petitioner submits two photographs of a patient undergoing a dental surgery procedure and a letter of recommendation from Dr. M-G-, an oral surgeon and owner of [redacted]. Dr. M-G- asserts that the Petitioner has been working as his "first surgical assistant,

performing the necessary functions to offer comfortable care, patient safety, calm demeanor, and predictable results to our patients, as well as assisting surgically in advanced surgeries." He points to the Petitioner's experience in dentistry, technical expertise, interpersonal skills, and commitment to her profession. The Petitioner's skills, knowledge, and prior work in her field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that she initially proposed to undertake has national importance under *Dhanasar's* first prong. While Dr. M-G- contends that the Petitioner "will continue to make significant contributions to the field of dentistry and surgery in the United States," his recommendation letter does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that her initial proposed endeavor offers broader implications in the field or substantial positive economic effects for our nation that rise to the level of national importance.

The Petitioner argues on motion that she "clearly and consistently" identified her proposed endeavor, that she possesses "exceptional qualifications and experience," that the processing of her petition involved "unjustified delays and procedural irregularities," and that the Director issued "unnecessary and misdirected Requests for Evidence (RFEs)." The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision.

The Petitioner also contests the correctness of our prior decision and maintains that she "satisfies all three prongs" set forth in the *Dhanasar* precedent decision, but she does not articulate how our determination relating to *Dhanasar's* first prong was based on an incorrect application of law or USCIS policy. She further asserts that our vacated decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*), supports the argument that her work "directly contributes to public health and addresses critical shortages."[1] The Petitioner, however, has not demonstrated how the potential prospective impact of her initial proposed endeavor stands to offer broader implications in her field or to generate substantial positive economic effects. *See Dhanasar*, 26 I&N Dec. at 889-90. Here, the Petitioner has not established that our latest decision dismissing the motion to reconsider was based on an incorrect application of law or policy and that our decision was incorrect based on the evidence in the record at the time of the decision.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, she has not established eligibility under *Dhanasar's* first prong. 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

[1] In December 2016, we vacated *NYSDOT* and adopted the *Dhanasar* framework for adjudicating national interest waiver petitions. Nevertheless, we are not persuaded by the argument that the Petitioner's initial proposed endeavor has national importance due to the shortage of workers in her field. Here, the Petitioner has not established that her initial proposed endeavor stands to impact or significantly reduce the claimed worker shortage. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process. Regarding shortages of qualified workers, *NYSDOT* indicated that "the job offer waiver based on national interest is not warranted solely for the purpose of ameliorating a local labor shortage, because the labor certification process is already in place to address such shortages." *See NYSDOT*, 22 I&N Dec. at 218.

time we issued our decision. Therefore, the combined motions 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.