U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37689995

Date: APR. 10, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a nutritionist, 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 her eligibility for a national interest waiver. We dismissed a subsequent appeal as well as two subsequently filed combined motions to reopen and reconsider. The matter is now before us on a third combined motion 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.

In our decision dismissing the Petitioner's appeal, we agreed with the Director 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 considered whether the Petitioner's proposed endeavor of owning and operating a nutrition counseling and consulting services company in the [redacted], Florida area was of national importance based on its projected economic impacts. We determined the Petitioner did not establish, by a preponderance of the evidence, that her company's services, which include educating individuals, and health care professionals on healthy dietary habits would have broader implications, beyond those individuals and entities, at a level commensurate with national importance as contemplated in *Dhanasar*. *Id.* We also considered the Petitioner's claims that the Director failed to properly weigh the prospective economic impact of her endeavor through direct and indirect employment, tax and sales revenue, and improved healthcare outcomes for her company's targeted demographic. Citing to *Dhanasar*, we explained that the Petitioner's economic projections "even if credible and plausible" would not "result in benefits to the regional or national economy to the level of "substantial positive economic effects," as contemplated by *Dhanasar*. *Id.* at 890.[1] In addition,

[1] Our decision also withdrew the Director's conclusion that the Petitioner established she is an advanced degree professional within the meaning of 8 C.F.R. § 204.5(k)(2), in part because the employment letters provided did not conform

our decision considered whether the Petitioner's proposed endeavor was of national importance under our STEM policy guidance which aims to advance STEM technologies and research to ensure the United States remains ahead of strategic competitors or current and potential adversaries. *See generally* 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policymanual. However, we determined it did not.

The Petitioner's subsequently filed combined motion to reopen and reconsider was also dismissed on the merits. Her motion to reopen was dismissed because the new evidence (three media publications) did not concern "the Petitioner and how the proposed endeavor may have national importance" but instead, provided generalized information about nutrition. We dismissed her motion to reconsider because we disagreed with the Petitioner's characterization of our initial decision's national importance analysis and determined her motion provided "generalized and uncorroborated assertions about the proposed endeavor's potential economic effects," which were not corroborated in the record.

In our most recent decision, the Petitioner's combined motion to reopen and reconsider was dismissed because we determined the Petitioner did not provide any new facts to establish we had erred or that she was eligible for a national interest waiver and that thus, reopening of her petition, was not warranted. We also determined that her motion to reconsider must be dismissed because it was based on "broadly disagreeing with our conclusions" but did not establish an error in our application of law or policy.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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. *Id.* With her current motion, the Petitioner submits a legal brief; a report prepared by [redacted] covering topics such as the market size, share, and trends analysis for the field of "Clinical Nutrition;" and an article (titled "[redacted]") published by [redacted] The Petitioner asserts that these documents present new facts that establish her eligibility. We disagree. The information pertaining to the positive health effects of nutrition counseling services and the economic importance of nutrition services were facts already in evidence when we made our initial decision and these facts were considered by the Director, and in our initial appellate decision. As such, we must dismiss the current motion to reopen because it does not meet the requirements of 8 C.F.R. § 103.5(a)(2).

Next, 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). As stated, 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. The Petitioner's contentions in her current motion to reconsider merely reargue facts and issues we have already considered in our previous decisions. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not

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with the requirements under 8 C.F.R. § 204.5(k)(3)(i)(B). Citing to *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) we explained that we would reserve our consideration of the Petitioner's eligibility under the second and third *Dhanasar* prongs. *Id.* (standing for the proposition that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision"). As such, we will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied because she has not demonstrated an error in our application of pertinent law or policy, such that our prior decision was incorrect.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.