U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37690501

Date: APR. 21, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a special needs educator, 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the job offer, and thus of the labor certification, would be in the national interest. We dismissed the Petitioner's subsequent appeal, combined motions to reopen and reconsider, and two additional motions to reconsider. The matter is now before us on a second motion to reopen combined with a fourth motion to reconsider. 8 C.F.R. § 103.5.

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.

I. LAW

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).

The scope of any motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Thus, our analysis for this combined motion is limited to whether the Petitioner submits new evidence or otherwise establishes that the dismissal of the prior motion to reconsider was based on an incorrect application of law or policy. 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 determining whether a petitioner merits a discretionary waiver of the job offer requirement "in the 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 on balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Petitioner is a special needs educator at an elementary school who proposes to continue to work in the United States in her field. As noted above, the Director denied the approval of this petition. In our decision dismissing the appeal, we agreed with the Director's decision that the Petitioner did not demonstrate the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.[2] We dismissed the Petitioner's subsequent three motions as they did not meet the applicable requirements. 8 C.F.R. § 103.5(a)(4). We incorporate our prior decisions by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on this fourth motion.

In dismissing the immediate prior motion to reconsider, we determined the Petitioner did not provide a cogent argument as to how we misapplied the law or USCIS policy in the prior motion to reconsider, noting that evidence in the record had already been reviewed and discussed in prior decisions, and we correctly concluded the Petitioner did not demonstrate her proposed endeavor is of national importance under *Dhanasar's* first prong. In our decision, we cited *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006), to point out that the Petitioner did not meet the requirements of a motion to reconsider by broadly disagreeing with the conclusions of our prior decisions. We noted that the Petitioner must, instead, specify laws, regulations, precedent decisions, or binding policies believed to be misapplied in the prior decision. We acknowledged the Petitioner's repeated contention that we misapplied the preponderance of the evidence standard of proof in our evaluation of the evidence, citing *Chawathe*. However, we reiterated that we already considered and analyzed the Petitioner's evidence in the petition under the preponderance of the evidence standard and found it insufficient to demonstrate eligibility for the requested benefit. Because the Petitioner did not address or provide reasons for reconsideration of the conclusions in our prior decision, we dismissed the motion to reconsider.

A. Motion to Reopen

The purpose of a motion to reopen is to afford a petitioner an opportunity to submit new facts—facts that existed on the date a petition was filed—and to support those facts with evidence. It is not intended to allow a petitioner to improve upon the previously deficient claims that failed to meet the clearly identified eligibility requirements. And as we noted, on motion a petitioner must still establish eligibility at the time of filing; a petition cannot be approved at a future date after a petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). We generally do not "consider facts that come into being only subsequent to the filing of a petition." *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998) (citing *Matter of*

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeal in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[2] We reserved our review of the Petitioner's eligibility under *Dhanasar's* second and third prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

Bardouille, 18 I&N Dec. 114 (BIA 1981)). Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey,* 541 F.3d 257, 261 (4th Cir. 2008). Here, the Petitioner's current motion to reopen does not overcome our prior decision.

On motion to reopen, the Petitioner offers a new statement in which she describes her responsibilities as a special education teacher at her current employer and introduces a new proposed endeavor, as follows:

> . . . I am cognizant of the fact that not all special needs children and their families have the opportunity to avail themselves of public schooling or access requisite support services. . . .
>
> To bridge this crucial support gap, I am in the process of conceptualizing a digital platform christened [redacted] meticulously tailored to cater to the diverse needs of stakeholders invested in inclusive education. This groundbreaking platform will offer an exhaustive array of resources, tools, and workshops curated for educators, parents, and students alike, irrespective of ability. Through my social media platforms, I will foster awareness surrounding disabilities and disseminate content advocating for disability-inclusive education. Additionally, I will host complimentary workshops and podcasts designed to empower parents and educators with the requisite skills to effectively champion the cause of their children and students . . . .
>
> My primary objective is to forge a dynamic and interactive space conducive to the exchange and enhancement of knowledge surrounding inclusive practices, thereby nurturing a more supportive and efficacious educational milieu for all special needs children.
>
> [redacted] shall transcend the confines of a mere platform, evolving into a collaborative nexus where stakeholders converge to share insights and ideate collectively. This interactive forum will empower us all to elevate educational outcomes and champion inclusivity across the spectrum of diverse learning communities.

The Petitioner then continues by explaining how this new endeavor will: 1) contribute to the educational system; 2) contribute to combatting discrimination and bullying against children with special needs; 3) contribute to the government's commitment to combatting bullying; 4) contribute to families with special needs children nationally; 5) contribute to the household economy of families raising children with disabilities and the national economy; 6) contribute to creating employment opportunities for individuals with special needs; 7) contribute to economically disadvantaged communities; and 8) contribute to the shortage of special needs professionals in the United States. She states that through this proposed endeavor she will "demonstrate how determination, support, and access to education can enable children with special needs to achieve success and contribute meaningfully to society."

Based on the Petitioner's new statement on motion to reopen, she has made a material change to her proposed endeavor. The Petitioner initially indicated that her proposed endeavor was to continue her work as a special education teacher with a job offer from [redacted] Then, in response to

the Director's request for evidence and on her first motion to reopen,[3] she provided additional information about her work as a special education teacher at [redacted] and indicated that her work on the specialized Individualized Education Programs (IEPs) she develops, along with the strategies, methods, and tools she creates and employs, all have broad implications for the education of students with disabilities, which extend far beyond the immediate school community. Now, on this second motion to reopen, she contends that she will develop a digital platform to offer many resources, tools, and workshops curated for educators, parents, and students alike that will foster awareness surrounding disabilities and disseminate content advocating for disability-inclusive education. She also indicates that she will host complimentary workshops and podcasts designed to empower parents and educators with the requisite skills to effectively champion the cause of their children and students. However, the Petitioner must establish all eligibility requirements for the immigration benefit have been satisfied from the time filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Further, a petitioner may not make material changes to a petition that has already been filed in an effort to make a deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1988). In *Dhanasar,* we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *Dhanasar,* 26 I&N Dec. at 889. Here, the Petitioner has not identified a specific and consistent proposed endeavor and therefore, has not established new facts overcoming our prior determinations and establishing eligibility.

The Petitioner also submits[4] multiple new industry articles and industry reports. The newly submitted industry articles and industry reports all generally discuss special education and teacher shortages and do not specifically speak to the Petitioner's specific endeavor she proposes to undertake and how the proposed endeavor may have national or even global implications within a particular field, significant potential to employ U.S. workers, or other substantial positive economic effects reflecting the endeavor's national importance, as contemplated by *Matter of Dhanasar*, 26 I&N Dec. at 889-90. The Petitioner's evidence on motion to reopen therefore does not establish new facts overcoming our prior determinations and demonstrating the national importance of the Petitioner's endeavor and eligibility for a national interest waiver. Therefore, we will dismiss the motion to reopen. 8 C.F.R. § 103.5(a)(2), (4).

B. Motion to Reconsider

The purpose of a motion to reconsider is to show error in the most recent prior decision. Here, the Petitioner's current motion to reconsider does not meet this standard.

In the Petitioner's current motion brief, she argues that we "misapplied the national importance sub-prong" when we indicated that we had "'already considered and analyzed the Petitioner's evidence in the petition under the preponderance of the evidence standard and found it insufficient to demonstrate eligibility for the requested benefit'" in our prior decision. She claims that we "erred in [our] application of this standard by failing to recognize that the evidence presented overwhelmingly supports the conclusion that [her] contributions to special education in the United States are of national importance."

[3] We recognize that this is the Petitioner's fourth motion filing with the AAO: the first was a combined motion to reopen and reconsider, the second and third were only motions to reconsider, and the fourth is also a combined motion to reopen and reconsider.

[4] We note that the Petitioner also submitted other evidence on motion to reopen which was previously submitted in the record and will not be discussed again here.

The Petitioner further contends that we "erred in not considering the substantial and probative evidence submitted." She asserts that she submitted relevant, credible, and probative evidence supporting the prospective impact of her proposed endeavor, which our office "arbitrarily disregarded." The Petitioner again requests that we "evaluate the entirety of the evidence submitted in accordance with [the preponderance of the evidence] standard" and the analysis provided in the current motion brief. The Petitioner then, again, outlines the proposed endeavor by quoting from her personal statement and opinion letters already in the record and insists that her statement, the opinion letters, researched articles, and the letter from her employer sufficiently show the endeavor's critical contribution to the educational and social well-being of children with disabilities across the United States, thus its national importance.

We are not persuaded by the Petitioner's arguments. Here, the Petitioner has not specified the reasons why the preceding motion decision was based on an incorrect application of law or policy. While the Petitioner indicates that we erred in our decision, she refers only to error in the consideration of the evidence and our determination that it was insufficient to demonstrate that the proposed endeavor is of national importance. She makes similar arguments to those previously presented on prior motions and does not specifically address our motion decision immediately preceding the current motion that she did not identify how our prior decision was based on an incorrect application of law or policy. As discussed in our prior decision, the Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; instead, the motion must demonstrate how we erred as a matter of law or policy. *See Matter of O-S-G-*, 24 I&N Dec. at 58 (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision). Again, as previously stated, we agree with our prior motion decisions that evidence in the record has already been reviewed and thoroughly discussed in previous decisions, and we correctly decided the Petitioner did not demonstrate her proposed endeavor is of national importance under *Dhanasar's* first prong.

A motion to reconsider does not entail de novo review of the entire record of proceeding, and a petitioner's general assertion that the record supports approval of the petition cannot suffice as a basis for reconsideration. The purpose of a motion to reconsider is to show error in the most recent prior decision and the Petitioner's latest filing does not meet this standard. We addressed the Petitioner's prior arguments in our earlier decisions, and the Petitioner's repetition of the same or similar arguments does not show proper cause for reconsideration.

III. CONCLUSION

The Petitioner has not established that the dismissal of the prior motion to reconsider was based on an incorrect application of law or policy at the time we issued our decision, warranting reconsideration of 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.