U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 37479380

Date: APR. 29, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, an attorney, 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).

Service Center Operations (SCOPS) denied the petition and a subsequent combined motion to reopen and reconsider, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the Petitioner's appeal and a subsequent combined motion to reopen and reconsider. The matter is now before us on a second combined motion to reopen and 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 an attorney who proposes to provide conciliation and mediation services in the United States. As noted above, SCOPS denied the approval of this petition. In our decision dismissing the appeal, we agreed with SCOPS' 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 combined motion to reopen and reconsider as it 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 second combined motion.

In dismissing the immediate prior combined motion to reopen and reconsider, we determined the Petitioner did not demonstrate that our prior appellate decision was based on an incorrect application of law or USCIS policy and that our decision was incorrect based on the evidence in the record at the time of the decision. We also determined that the Petitioner did not offer new evidence or facts to overcome the stated grounds for dismissal in our prior appellate decision, 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 specifically noted that the Petitioner's combined motion did not address our specific determinations and conclusions in the prior appellate decision as they relate to *Dhanasar's* first prong or explain how our prior appellate decision erred in analyzing her first prong arguments and evidence.

### 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. Here, the Petitioner's current motion to reopen does not overcome our prior decision.

On motion to reopen, the Petitioner contends that "it is essential to consider her post-filing achievements and material developments since the initial submission of [her] petition that serve to reinforce her eligibility for the requested benefits and further emphasize the national interest of her

[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 whether the Petitioner's proposed endeavor meets the "substantial merit" requirements of *Dhanasar's* first prong and 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).

work within the United States." She specifically indicates that she "has broadened the scope [of her proposed endeavor] adapting her vision to the evolving challenges faced by the U.S. legal system." However, while a motion to reopen allows the Petitioner to submit additional evidence that was not previously available, the facts presented within such additional evidence must have existed on the date the petition was filed and be supported by evidence. A motion to reopen is not intended to allow a petitioner to improve upon the previously deficient claims that failed to meet the clearly identified eligibility requirements. Nor is it intended to allow a Petitioner to expand the scope of a proposed endeavor to meet eligibility requirements. And as we noted previously, 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 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). Therefore, we cannot consider new facts or a newly expanded proposed endeavor on this combined motion.

The Petitioner now submits a brief and an updated Professional Plan and Statement, dated January 2025,[3] in which the only substantive updates pertain to her knowledge and experience working in Brazil. The remainder of her January 2025 statement is substantively identical to her statement submitted with the prior combined motion. In dismissing the appeal, we discussed the submitted evidence and explained why it was insufficient to establish the national importance of the Petitioner's proposed endeavor under the first prong of *Dhanasar*. We concluded that because the Petitioner had not established the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework, the remainder of her arguments regarding the national interest waiver need not be addressed. The Petitioner's current brief and updated statement submitted on motion generally discuss the Petitioner's proposed endeavor and the arguments outlined below, rather than addressing the deficiencies outlined in our prior combined motion decision. The Petitioner's evidence on motion to reopen therefore does not establish new facts overcoming our prior determination and demonstrating the national importance of the Petitioner's endeavor and eligibility for a national interest waiver. Consequently, 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 makes several arguments in support of her motion to reconsider that we will address individually. First, the Petitioner contends that we "reversed [SCOPS'] earlier finding of substantial merit in the prior decision." She states that "[p]revious decisions established that [she] met the substantial merit requirement and were based on clear, well-documented evidence which was not fully appreciated or considered in the latest decision," and argues "that this oversight constitutes an error that warrants reconsideration of her case."

[3] The Petitioner also submits additional copies of evidence previously submitted in the record.

This is inaccurate. In our decision dismissing the Petitioner's appeal, we did not reverse SCOPS' decision pertaining to the proposed endeavor's substantial merit. In fact, we did not discuss this particular issue as it relates to *Dhanasar's* first prong. We specifically stated that we would not address whether the proposed endeavor meets the "substantial merit" requirement of *Dhanasar's* first prong, as evaluating her eligibility for this requirement would not change the outcome of the decision at that time.[4] We also did not address the substantial merit of the proposed endeavor in our most recent decision to dismiss the combined motion to reopen and reconsider. Therefore, contrary to the Petitioner's assertions, we did not reverse SCOPS' earlier finding of substantial merit and will not address the Petitioner's arguments on this matter or whether the proposed endeavor meets the "substantial merit" requirement any further.

Next, the Petitioner asserts that she received "inadequate representation and poor assistance" from her representative at the time of filing her Form I-140, which should be a consideration to support reconsidering and reopening her petition. Here, the record contains a Form G-28, Notice of Appearance as Attorney or Representative, showing that the Petitioner was represented by an accredited representative in filing the petition. We consider complaints based upon ineffective assistance against attorneys and accredited representatives, but the Petitioner has not indicated that she is claiming ineffective assistance of counsel or accredited representative and she does not cite to any precedent law or regulations or provide relevant evidentiary documents under *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), aff'd, 857 F.2d 10 (1st Cir. 1988) (setting forth the framework and documentary requirements for claims of ineffective assistance of counsel). To the extent the Petitioner makes an ineffective assistance of counsel claim (for an accredited representative), we note that she has not complied with the requirements described in *Matter of Lozada*,[5] or established that her former representative's assistance was so deficient she was prejudiced by the performance. *See Matter of Melgar*, 28 I&N Dec. 169, 171 (BIA 2020). Further, even if the ineffective representation claim was established, which it was not, it is not clear that the outcome of the instant matter was affected by the prior representative's alleged misconduct. In this case, we thoroughly reviewed the record of proceedings before us on appeal and determined that the Petitioner's documentary evidence did not demonstrate her proposed endeavor is of national importance under *Dhanasar's* first prong. Regardless, this claim of ineffective representation does not relate to our most recently issued decision to dismiss the Petitioner's combined motion to reopen and reconsider. Instead, the ineffective representation claim focuses on the issues contained in SCOPS' August 2022 decision. On motion, we will only consider arguments and evidence relating to the grounds underlying our most recent decision. Accordingly, we will not address the claim of ineffective representation as it relates to the SCOPS' denial of the Form I-140. The Petitioner bears the burden of establishing that our dismissal of her prior combined motion to reopen and reconsider was itself in

[4] We also declined to reach the Petitioner's appellate arguments regarding her eligibility under *Dhanasar's* second and third prongs for the same reason.

[5] Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) a written affidavit of the Petitioner attesting to the relevant facts, setting forth in detail the agreement that was entered into with former counsel, the specific actions actually taken by the former counsel, and any representations that former counsel made about his or her actions; (2) evidence that the Petitioner informed former counsel of the allegation of ineffective assistance and was given opportunity to response, along with any response by prior counsel; and (3) evidence that the Petitioner filed a complaint with appropriate disciplinary authorities (e.g. with a state bar association) with respect to any violation of counsel's ethical or legal responsibilities or an explanation why the Petitioner did not file a complaint. *Lozada*, 19 I&N Dec. at 639.

error. If the Petitioner demonstrated that we erred by dismissing that combined motion, then there would be grounds to reopen. The Petitioner has not done so in this proceeding. The filing of a motion does not present a new opportunity for reaching the merits of her claim as though our previous dismissals had not been issued. The Petitioner was self-represented when filing both, the September 2024 combined motion to reopen and reconsider and the December 2023 appeal. The Petitioner has not shown our dismissal of her combined motion was in error. In the absence of satisfying motion requirements in the present filing, we will not reach back to consider the Petitioner's untimely assertions regarding the underlying decision of SCOPS to deny the petition.

The Petitioner also argues that our dismissal of the prior combined motion focused on our most recent decision (our decision on appeal) and did not adequately address earlier decisions that were instrumental to her case. She contends that our lack of consideration for all prior decisions "demonstrates a fundamental flaw in the adjudication of [her] case" as the earlier denials "contained substantial misunderstandings of the Petitioner's qualifications and evidence, which were carried forward into the final decision." Further, the Petitioner then argues that we "failed to follow proper procedures, such as not addressing all evidence submitted [and] the prior denial decision failed to give proper weight to the Petitioner's submissions, including the 6,000 pages of documentation . . . which directly contradicted the reasons for denial." She contends that we failed to adequately consider all evidence or arguments she presented in the previous combined motion and that we dismissed her prior combined motion "without addressing the critical arguments or providing an explanation for agreeing with the latest decision." The Petitioner again requests that we consider all the evidence in the record and re-evaluate whether her proposed endeavor is of substantial merit and national importance under *Dhanasar's* first prong. She then, again, outlines the proposed endeavor by quoting from her personal statement and opinion letters already in the record and insists that the totality of the evidence sufficiently shows her endeavor's contributions to the field of law in the United States, thus its national importance. First, we note that the standard of review on motion differs from the de novo standard of review we employ on appeal. The second combined motion before us does not entitle the Petitioner to reconsideration of the denial of the petition or the dismissal of the subsequent appeal. Rather, a combined motion pertains to our most recent decision. In other words, we examine any new arguments to the extent that they pertain to our prior dismissal of the Petitioner's prior combined motion. Therefore, we cannot consider new objections to the earlier denial of the petition or the Petitioner's appeal of it, and the Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding.

Regardless, the record indicates that SCOPS, and subsequently our office, considered the Petitioner's qualifications under the three prongs of the *Dhanasar* framework. SCOPS explained in its denial of the petition and a subsequent combined motion, and we explained in the dismissal of the appeal and a subsequent combined motion, how specific evidence within the record—such as the Petitioner's professional plan and statement, business plan, letters of intent, recommendation letters, and evaluation of the proposed endeavor—did not establish that the Petitioner's proposed endeavor to provide conciliation and mediation services in the United States has national importance; that she is well positioned to advance the endeavor; or that it would be beneficial to the United States to waive the requirements of a job offer and, thus, of a labor certification.[6] Furthermore, our prior decision

[6] Neither we nor SCOPS are required to state exactly what is insufficient about each piece of evidence. Instead, each piece

properly analyzed the Petitioner's assertions, and the Petitioner has not established proper grounds for reconsideration.

We are not persuaded by the Petitioner's arguments. Here, the Petitioner has not specified the reasons why our prior combined 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 in prior filings and does not specifically address our combined 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 combined motion decision 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

On motion to reopen, the Petitioner has not submitted new evidence to overcome our previous decision. Further, on motion to reconsider, the Petitioner has not established that the dismissal of the prior combined motion to reopen and 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 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.

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of evidence is analyzed and considered in its totality to determine, overall, whether the Petitioner has met their burden in establishing they are eligible for the benefit. *Ren v. USCIS*, 60 F.4th 89, 97 (4th Cir. 2023) ("[S]o long as [USCIS] has given reasoned consideration to the petition, and made adequate findings, we will not require that it address specifically each claim the petitioner made or each piece of evidence the petitioner presented." (cleaned up)). Furthermore, neither SCOPS' nor our decisions were silent as to the reasons for finding that the proposed endeavor was not nationally important. Here, all of the prior decisions combined indicate that SCOPS and our office reviewed the evidence submitted and found it insufficient in showing the Petitioner's endeavor to be nationally important because it did not show that her proposed conciliation and mediation services stand to sufficiently extend beyond her clients to affect the field of alternative dispute resolution more broadly, nor did it show that it has significant potential to employ US workers or otherwise offers substantial positive economic effects for the United States.