U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37035876

Date: APR. 29, 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 an individual of exceptional ability, 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 the requested national interest waiver. 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 combined motion.

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 (the dismissal of the appeal). 8 C.F.R. § 103.5(a)(1)(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 appellate decision, we determined that the Petitioner did not establish eligibility for a national interest waiver because she did not meet the first prong of the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016).[1] Specifically, we explained that, although the

[1] On appeal, the Petitioner erroneously states that we affirmed the Director's determination that she qualifies as an individual of exceptional ability and is well positioned to advance her proposed endeavor. In fact, we did not address whether the Director correctly found that the Petitioner is an individual of exceptional ability and is well positioned to advance the proposed endeavor, as the determination that the proposed endeavor lacks national importance was dispositive of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

Director determined that the Petitioner's endeavor to operate a business venture in the field of cosmology had substantial merit, the record did not establish the national importance of the endeavor as contemplated in *Dhanasar*. *Id.* Concerning the purported national importance of her proposed endeavor, on appeal, the Petitioner pointed to detailed projections provided in her business plan related to the anticipated growth of her business. Upon review, we concluded that the Petitioner did not provide an explanation or probative evidence corroborating the basis for her business projections or otherwise establish that her endeavor would result in benefits to the regional or national economy that would reach the level of "substantial positive economic effects" contemplated in *Dhanasar*. *Id.* at 890.

Our appellate decision also addressed the Petitioner's assertion that the Director did not consider certain evidence in evaluating her proposed endeavor, including industry reports and salary information for positions within the industry that she claimed supported her endeavor's national importance. We explained that it is not the national importance of a field, industry, or profession in which an individual proposes to work, but that we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar*, 26 I&N Dec. at 889. We further discussed the Petitioner's concern that the Director overlooked certain documentation pertaining to her work experience and education, explaining that the focus of the first prong of the *Dhanasar* framework is not on an individual's education and prior work experience, but on the proposed endeavor itself; whether an individual is well positioned to advance an endeavor is relevant not to the first prong of the *Dhanasar* adjudicative framework, but to the second, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. And as to the Petitioner's assertion that the Director applied a higher standard of proof in evaluating the evidence of record and imposed novel substantive and evidentiary requirements beyond those set forth in the *Dhanasar* framework, we observed that she did not identify where or how such a standard or requirements were applied.

On motion to reopen, the Petitioner reiterates assertions that the evidence of record establishes the importance of her proposed endeavor based on forecasts described in her business plan, information concerning the industry in which she intends to operate, and documentation outlining her qualifications to advance her endeavor.[2] She does not, however, provide new facts or evidence to support her statements. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. As the Petitioner does not submit new facts to demonstrate that she meets the "national importance" requirement of *Dhanasar*'s first prong, she has not overcome our prior determination.

The Petitioner has not submitted new facts that that would warrant reopening of the proceedings and, therefore, has not met the requirements for a motion to reopen. 8 C.F.R. § 103.5(a)(2). The motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion to reconsider, the Petitioner reasserts her arguments that the significance of certain evidence was disregarded and that a higher standard of proof than that of preponderance of the evidence[3] was imposed in evaluating the national importance of her proposed endeavor. Citing

[2] Again, we note that a petitioner's qualifications to advance a proposed endeavor relate not to the first prong of the *Dhanasar* framework, which concerns the endeavor's national importance, but to the second.

[3] *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place).

documentation and reasoning provided on appeal, the Petitioner shifts the source of her disagreement with the decision from the Director's denial to the AAO's dismissal. She does not explain how any law or policy was misapplied in our dismissal of her appeal. We addressed the Petitioner's prior arguments in our earlier decision, and her repetition of the same arguments does not show proper cause for reconsideration. The Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions and restating her initial claims; the motion must demonstrate how we erred as a matter of law or policy. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (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).

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, she has not met the requirements for a motion to reconsider. 8 C.F.R. § 103.5(a)(3). 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.