U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31998569

Date: AUG. 05, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a physical therapist, 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 qualified for EB-2 classification as an advanced degree professional, but did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed a subsequent appeal. The matter is now before us on a motion to 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.

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). Our review on motion is limited to reviewing our latest decision. 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.

In our prior decision, incorporated here by reference, we determined the Petitioner did not meet the first prong of the analytical framework in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). Specifically, we concluded the Petitioner did not establish the national importance of her proposed endeavor. *See id.* at 889 (providing in relevant part that, to establish eligibility for a national interest waiver, the petitioner must establish that their specific proposed endeavor has national importance).

On motion to reconsider, the Petitioner asserts we erred in our evaluation of her proposed endeavor's potential impact to "broadly enhance societal welfare as providing highly necessary, much needed, and very scarce pediatric physical therapy services," contribute "to alleviating the endless wait for therapy," and "halt the physical decline of young Americans in underserved areas." The Petitioner noted that we raised questions regarding the contents of the business plan, specifically relating to

proposed hiring and wages. She asserts that the projected salaries between the first and fifth year of her company's operation are vastly different because she expects her medical services and business operations will significantly improve over five years as a result of her professional skill and demand for pediatric physical therapy. The Petitioner reiterates that the previously submitted evidence indicates other physical therapists have recognized her proposed endeavor has national importance and argues that though her plan to operate a mobile physical therapy company is not novel or unique, the fact that there are existing similar operations shows there are insufficient providers to service pediatric patients.

In our prior decision, we addressed the relevant evidence and determined it did not demonstrate any broader implications of the Petitioner's proposed endeavor in her field at a level of national importance. *See id.* (stating that national importance is evaluated through consideration of "potential prospective impact" and "broader implications"). We acknowledged the Petitioner's plan to employ five workers but explained the record did not establish her specific proposed endeavor's significant potential to employ U.S. workers or have a substantial positive economic effect. *See id.* at 890 ("An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, . . . may well be understood to have national importance."). On motion, the Petitioner does not cite any specific error in our application of *Dhanasar* or specify any other legal error or misapplication of policy in these determinations.

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, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.