U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31680899

Date: AUG. 08, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a physician and entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, and a national interest waiver of the job offer requirement attached to this classification. See section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualifies for the EB-2 classification as an advanced degree professional but the record did not establish that a waiver of the Petitioner's job offer requirement is in the national interest. We dismissed the subsequent appeal. The matter is now before us as a combined motion to reopen and to reconsider. 8 C.F.R. § 103.5(a)(2)-(3).

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 motions.

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). Our review on motion is limited to reviewing our latest decision. 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 decision, incorporated herein, we noted the Director's finding that the Petitioner established her eligibility for the EB-2 classification as an advanced professional and 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), reserving the remaining two prongs. Specifically, we concluded the Petitioner did not establish the national importance of her proposed endeavor, which is to promote breastfeeding by educating, training, and supporting mothers in breastfeeding; engaging in the research, publication, and presentation of information regarding breastfeeding; and establishing a non-profit organization that will promote breastfeeding.

On appeal, the Petitioner claimed that the Director did not consider all of the evidence relating to national importance, including articles and evidence in the record relating to the importance of breastfeeding in general and physician and infant formula shortages in the United States, and did not sufficiently explain the basis for denial. In our decision on appeal we summarized the Director's decision, highlighting the Director's analysis of the Petitioner's documents, and in our analysis we concluded that the Director had reviewed, discussed, and analyzed the Petitioner's evidence in determining that, while she established the substantial merit of her proposed endeavor, she had not demonstrated its national importance. In addition, we noted that the Director specifically considered the articles and evidence referenced by the Petitioner but found that these documents relate to the field at issue in general, rather than to the specific, proposed endeavor. We agreed with the Director's reasoning in support of this finding that in determining whether a proposed endeavor has national importance, the focus is not on the importance of the industry, field, or profession in which an individual will work; but on the "specific endeavor that the [noncitizen] proposes to undertake." See id. at 889. We also pointed out that the Petitioner did not address this finding by the Director on appeal and did not explain how her specific endeavor would increase the practice of breastfeeding, reduce the physician shortage, or reduce the infant formula shortage at a level commensurate with national importance. We also concluded that while the Director did not discuss the part of the Petitioner's proposed endeavor that involves her engaging in research regarding breastfeeding, the Petitioner did not assert on appeal that the Director erred by not discussing this aspect of her proposed endeavor, and we therefore deemed the issue waived.

On motion to reconsider, the Petitioner states that our appeal decision neglected to address the Director's clear abuse of discretion and that we imposed standards and requirements not found or grounded in precedent law. The record does not support the Petitioner's assertions. As we will discuss in more detail, our prior decision provided de novo review of the record on appeal and determined the Petitioner had not demonstrated the national importance of her endeavor as contemplated by Dhanasar by a preponderance of the evidence.

The Petitioner asserts generally that we did not consider the evidence specified in the appellate brief and erred in our analysis by not engaging in a comprehensive review of the evidence. However, we reviewed the relevant evidence and arguments, including the Petitioner's assertions of errors by the Director, and sufficiently explained the deficiencies in the record in finding that Petitioner did not establish the national importance of her proposed endeavor. However, more specifically, the Petitioner asserts again that the Director did not analyze the articles, submitted in the record below, discussing the baby formula shortage, the need to educate mothers on continued breast feeding, and physician shortages. As discussed in our appeal decision and summarized above, the Director did analyze the submitted articles and explained why they do not establish the national importance of her proposed endeavor.

The Petitioner further asserts that the Director did not analyze and we did not consider her updated statement and updated proposed endeavor submitted to the Director. However, the Petitioner merely referenced her personal statements in her appeal brief and did not specify what content from the updated statement and proposed endeavor were not considered by the Director and how consideration of the information would establish the national importance of her endeavor. On motion, she specifies that we did not consider the part of her endeavor as it relates to the establishment of a nonprofit clinic.

However, the Director discussed the Petitioner's intent to open a non-profit and determined the Petitioner had not established that her company would enhance societal welfare on a level that would be considered national in scope. The Petitioner did not raise arguments regarding the Director's determination on this issue on appeal, and similarly on motion does not specify how the Director erred in the analysis as it relates to her clinic.

The Petitioner then argues that it was "not accurate" for us to say in our decision that she did not discuss on appeal the research or investigative aspect of her proposed endeavor and that we erred by not analyzing the issue on appeal. The Petitioner then refers us to page 10 of her appeal brief. However, her appeal brief does not address her research on breastfeeding, and page 10 of the brief primarily addressed prong two of Dhanasar. As a result, the Petitioner did not identify where in her appeal she discussed her research or made assertions of error by the Director on this issue to support her claim that we erred in not addressing the issue on appeal.

The Petitioner therefore has not demonstrated we erred as a matter of law or policy in our prior decision or that the decision was incorrect based on the evidence in the record of proceedings at the time. Accordingly, she has not satisfied the requirements for a motion to reconsider. See 8 C.F.R. § 103.5(a)(3).

Additionally, the Petitioner has not asserted or established new facts relevant to our appellate decision that would warrant reopening of the proceedings. 8 C.F.R. § 103.5(a)(2). Consequently, we have no basis for reopening or reconsideration of our decision, and the combined motions will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and her underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.