U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31260733

Date: AUG. 13, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the field of accounting/business, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or 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 although the Petitioner qualified as an advanced degree professional, she did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.[1] The Director dismissed a subsequently filed combined motion to reopen and motion to reconsider. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

As a preliminary matter, we must emphasize that the Petitioner has not appealed the June 2023 denial of the Form I-140, Immigrant Petition for Alien Workers, but rather the Director's subsequent dismissal of her combined motions to reopen and reconsider from September 2023. 8 C.F.R. § 103.5(a)(1)(ii). Therefore, the question before us on appeal is limited to whether the Director erred in dismissing the combined motions.[2]

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that satisfies these requirements and demonstrates eligibility for the requested benefit may be granted. *See Matter of*

[1] An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

[2] Although the June 2023 denial is not before us, we will refer to portions of that decision for context.

Coelho, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). In the motion to reopen, the Petitioner referenced previously submitted evidence, such as the business plan, offering the same or similar arguments that the Director already considered and discussed in the June 2023 decision. Upon review, we agree that the Petitioner had not established eligibility for the requested classification and therefore, the Director properly dismissed the motion to reopen.

A motion to reconsider must establish that the 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). A motion that satisfies these requirements and demonstrates eligibility for the requested benefit may be granted.

In the June 2023 denial notice, the Director concluded that the Petitioner had not shown "that the proposed endeavor will impact the field more broadly at a level commensurate with national importance," and had not demonstrated "that the proposed endeavor realistically has the significant potential to employ U.S. workers or otherwise offers substantial positive effects for the United States."[3] The Director discussed the Petitioner's business plan and financial documents.

On motion to reconsider, the Petitioner contended that "some of the case facts, that fulfilled the laws and policies, were not considered at the time the decision was made by USCIS." The Petitioner also repeated verbatim her arguments regarding the national importance of her proposed endeavor from the initial petition letter and her request for evidence response without explaining why the Director should find these claims any more persuasive than before. Further, as noted above, she referenced previously submitted evidence offering the same or similar arguments that the Director already considered and discussed in the June 2023 decision. Moreover, the motion brief did not contend that the Director's decision was based on an incorrect application of law or policy, nor was it supported by any relevant caselaw, statute, or regulation. Thus, the Director properly dismissed the motion to reconsider.

On appeal, the Petitioner again contends "that her application was not carefully and fairly reviewed by the case officer as many of the case facts, that fulfilled the laws and policies, were not considered at the time the decision was made by the case officer." The Petitioner further states that she is submitting "the same application along with the evidence, that was submitted to the USCIS for the motion to reopen and reconsider, with the initial petition and Request for Evidence submission." However, as previously stated, upon review, she has not established eligibility for the requested national interest waiver, and therefore, for the reasons discussed, the Petitioner has not established that the Director dismissed her combined motions in error or otherwise overcomes the basis for the prior decision. As such, we will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The appeal is dismissed.

[3] The Director incorrectly included their analysis of "evidence of investors interested in funding [her] endeavor" under *Dhanasar's* first prong. The interest of potential customers, users, investors, or other relevant entities or individuals are considerations under *Dhanasar*'s second prong.