U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32959646

Date: AUG. 21, 2024

Appeal of Texas Service Center 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 or, in the alternative, as an individual of exceptional ability in the sciences, arts or business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner merits a discretionary waiver of the job offer requirement "in the national interest." The record reflects that the Petitioner filed subsequent combined motions to reopen and reconsider. The Director dismissed the motion to reopen, after which, the Petitioner filed an appeal. In our decision, we withdrew the Director's decision and remanded the matter, as the Director did not address the Petitioner's motion to reconsider. Following our remand of the matter, the Director dismissed the motion to reconsider, concluding that the documentation provided by the Petitioner in support of her motion to reconsider failed to establish that the requirements for filing a motion to reconsider had been met. The Director further noted that the Petitioner had not explained how USCIS misinterpreted policy, law, or precedent decisions in concluding that the petitioner was not qualified for the requested classification. 8 C.F.R. § 103.5. The matter is now before us again on appeal, where we will consider her appeal as it relates to the Director's decision to deny the Petitioner's motion to reconsider. 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.

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our 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).

On appeal, the Petitioner submits a brief and additional evidence. In her brief, she contends that the Director's decision to dismiss her motion to reconsider was issued one day after her motions were reopened, and that the Director copied his previous decision and disregarded our decision. Further, the Petitioner states that the Director did not issue any request for evidence or offer any additional analysis of her arguments. In the Director's decision on her motion to reconsider, the Director acknowledged that the Petitioner had submitted additional evidence and provided an analysis of that evidence and how it related to the initial decision denying her petition. We note that our prior decision did not require the Director to take any specific action, aside from issuing a decision on the motion to reconsider, which the Director did.[1] The Petitioner contends that the Director did not follow the "two part evaluation process" for adjudicating her petition; however, the Director did not deny the petition based on the Petitioner's eligibility for the underlying EB-2 classification, which is what the Petitioner is referencing here. The Director had originally concluded that she did not establish her eligibility under the *Dhanasar* framework, and as such she did not qualify for a national interest waiver.

Although the Petitioner states that she received a "lack of proper representation" which "significantly prejudiced her case and deprived her of a fair opportunity to present her claim" she has not established that the Director erred in dismissing her combined motions for not meeting the filing requirements. The Petitioner alleges that the Director gave less weight to "the probative evidence because the [Petitioner] is a woman" but does not provide any evidence to support this assertion. Our review of the Director's decisions issued regarding her petition further do not support her assertion. Although the Director's decision on her motion to reconsider discussed the statement and evidence she submitted with her motions, he indicated that as the Petitioner's motions did not meet the requirements of a motion to reopen or reconsider, the underlying decision to deny her petition remained undisturbed. On appeal, the Petitioner's brief and evidence primarily continues to assert her eligibility and qualifications for the requested classification but does not establish that the Director erred in dismissing her motion to reconsider. As such, we will dismiss her appeal.

ORDER: The appeal is dismissed.

[1] Further, our prior decision on her initial appeal noted that the Petitioner's previous brief primarily addressed the Director's denial of her petition, which was not before us. We also did not determine that the Director erred in his dismissal of the Petitioner's motion to reopen.