U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33480429

Date: AUG. 22, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a marketing manager and entrepreneur, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 immigrant 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 had not established 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 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)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

We incorporate by reference our prior analysis in the appeal decision. By way of summation, the Petitioner proposed to found a marketing consulting company located in Florida, with plans to expand into Texas and North Carolina within three years, and to increase an initial staff of three workers to 11 total employees within the first five years of operation. Similar to the Director, we explained that the record does not establish how the potential prospective impact of the specific endeavor the Petitioner proposes to undertake may have the type of broader implications indicative of national importance. *See Matter of Dhanasar*, 26 I&N Dec. 884, 888-91 (AAO 2016). For example, we noted that the endeavor's impact appears to be limited to the organizations and clients her company would serve. As further examples, we observed that the record does not establish how the proposed endeavor may have national or even global implications within the field of marketing or any other particular

field, or how the proposed endeavor may have significant potential to employ U.S. workers. *See id.* Ultimately, we concluded that the record does not establish how the proposed endeavor may have national importance, as required by the first *Dhanasar* prong, and we reserved our opinion regarding the second and third *Dhanasar* prongs. *See id.*; *see also 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"); *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).

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner references the requirements of *Dhanasar*. In relevant part, the Petitioner also indicates that we misapplied the preponderance of evidence standard to the company's business plan; recommendation letters "which attest to the Appellant's work and achievements in the field"; generalized "industry reports and articles"; and "[c]ompany documents, which demonstrate that the Appellant is already developing her proposed endeavor." *See Matter of Chawathe*, 25 I&N Dec. at 375-76. The Petitioner further states, "Pursuant to 8 C.F.R. § 103.2(b)(8), if there is insufficient evidence to meet the [preponderance of evidence] standard, examiners should resolve their doubts by requesting clarifying evidence to afford the Appellant the opportunity to explain and document its eligibility." The Petitioner's assertions on motion to reconsider are familiar because they closely mirror the assertions she raised on appeal regarding the Director's decision.

We first note that the brief the Petitioner submitted in support of the motion to reconsider is essentially the same brief she submitted in support of her appeal, with many passages of verbatim language. A motion to reconsider is not a process by which a petitioner may submit essentially the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006).

We next note that, even if the Petitioner had not improperly submitted on motion to reconsider essentially the same brief she submitted in support of her appeal and generally alleged error in our prior decision, the Petitioner's brief misstates law and policy. For example, 8 C.F.R. § 103.2(b)(8) does not provide that "examiners should resolve doubts by requesting clarifying evidence," as the Petitioner asserts. Instead, it establishes that, if evidence submitted with a benefit request is either incomplete or does not establish eligibility, adjudicators have the discretion to deny the benefit request for ineligibility, although adjudicators also have the discretion to request additional evidence. 8 C.F.R. § 103.2(b)(8). Petitioners—not adjudicators—bear the burden of establishing eligibility for requested benefits. *See Matter of Chawathe*, 25 I&N Dec. at 375-76.

We further note that much of the evidence in the record of proceedings at the time of our prior decision, to which the Petitioner refers on motion to reconsider, is irrelevant to the issue of whether the proposed endeavor may have national importance—the basis for which we dismissed the appeal. For example, the "industry reports and articles" to which the Petitioner refers provide generalized information—they do not address the Petitioner; the specific endeavor she proposes to undertake; and how the proposed endeavor may have national or even global implications within any particular field, significant potential to employ U.S. workers, or other indicia of national importance. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91. As another example, the recommendation letters that address "the Appellant's work and achievements in the field" and the "[c]ompany documents, which demonstrate that the Appellant is already developing her proposed endeavor" are material to the second *Dhanasar*

prong—whether the Petitioner may be well-positioned to advance the proposed endeavor—but they do not inform how the potential prospective impact of the specific endeavor the Petitioner proposes to undertake may have national importance, as contemplated by the first *Dhanasar* prong. *See id.* Contrary to the Petitioner's assertions on motion, we explained why the evidence does not establish how the proposed endeavor may have national importance under the preponderance of evidence standard. *See Matter of Chawathe*, 25 I&N Dec. at 375-76.

We have reviewed the record in its entirety. However, to the extent that the evidence in the record of proceedings at the time of our prior decision is relevant to the basis for which we dismissed the appeal, the Petitioner does not establish on motion to reconsider how we may have misapplied *Dhanasar* or any other applicable law or policy to that evidence.

Because 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, the motion to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(3)-(4).

ORDER: The motion to reconsider is dismissed.