U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34891822

Date: DEC. 02, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a nutritionist, 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 Texas Service Center denied the petition, concluding that the record did not establish that a waiver of the required job offer, and thus of a labor certification, would be in the national interest. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and 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 combined motions.

I. LAW

A motion to reopen is based on new facts that are supported by documentary evidence, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3).

II. ANALYSIS

The Petitioner, a nutritionist, endeavors to start a business, [redacted] to provide "a complete nutritional solution through modular services," which includes upgrading "the quality control, handling, and storage of food served in schools and supermarkets." The Petitioner intends to provide services ranging from food safety consulting to training, nutritional advice, cooking classes, and seminars.

The Director concluded that although the Petitioner had established the substantial merit of her proposed endeavor, she had not demonstrated its national importance, that she is well-positioned to

advance her proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification. On appeal, we concurred with the Director that the Petitioner had not demonstrated the national importance of her proposed endeavor. As this basis for dismissal was dispositive of the Petitioner's appeal, we did not reach her arguments concerning the remaining prongs of the *Dhanasar* framework.

A. Motion to Reopen

On motion to reopen, the Petitioner asserts her newly submitted evidence includes two signed letters from potential clients, specifically letters from the founder of [redacted] and the Director of [redacted], and a contract with [redacted] from July 2022.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes within the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new fact." A motion to reopen that does not satisfy the applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

In this decision, we incorporate our prior decision by reference and repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion. *See, e.g.*, *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) (noted that "statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight").

Here, the two signed letters submitted by the Petitioner on motion were previously submitted before the Director, so do not constitute "new facts" for the purposes of a motion to reopen. Similarly, the Petitioner's submitted consultation contract with [redacted] indicates the Petitioner provided nutritional services in developing menus. On motion, the Petitioner contends this contract demonstrates her "immediate impact on public health through nutrition education and consultancy in the [United States]" and "illustrat[es] her active engagement in initiatives that align with public health goals. However, these factors are not related to whether the proposed endeavor itself has national importance, as considered under the first *Dhanasar* prong. *Matter of Dhanasar*, 26 I&N Dec. at 889. Rather, the Petitioner's contract submission relates to the second *Dhanasar* prong, which examines whether the Petitioner is well positioned to advance the proposed endeavor. *Id.* at 890. Specifically, the contract implicates the Petitioner's demonstration of success in efforts similar to her proposed endeavor, progress toward achieving her proposed endeavor, and the interest of potential customers or other entities in her endeavor. *Id.* In this matter, the Director previously determined the Petitioner had not demonstrated the national importance of her proposed endeavor and we concurred with the Director's determination. As this finding was dispositive of the Petitioner's appeal, we did not reach the Petitioner's eligibility under additional *Dhanasar* prongs. As such, the Petitioner's contract submitted on motion is not relevant to the issue raised on motion, whether the Petitioner's endeavor has national importance, and does not constitute "new facts." As the Petitioner's motion does not contain "new facts," it does not meet the requirements of a motion to reopen.

B. Motion to Reconsider

On motion to reconsider, the Petitioner asserts her appeal was erroneously denied as the appropriate eligibility requirements were not applied. Rather, the Petitioner claims the requirements for employment categories other than the national interest waiver were applied and we "should not impose an unreasonable burden, such as a necessity of the petitioner [to] demonstrate extraordinary professional leadership in the market" or "future management of significant portions of the workforce." However, our previous decision does not contain any of the above requirements highlighted by the Petitioner, which relate to other employment categories. Upon review, the record demonstrates the appropriate national interest waiver requirements and preponderance of the evidence standard were applied in the appeal dismissal.

The Petitioner claims no petitioner would be able to meet "the stratospheric national economic impact that the [o]fficers seem[] to require for approval." *Dhanasar* indicates "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Matter of Dhanasar* at 890. The Petitioner contends the plain language of this citation evidences an endeavor's potential to employ one U.S. worker is sufficient to demonstrate national importance. However, this citation equates the significant potential to employ U.S. workers to a "substantial positive economic effect," while indicating that other, additional substantial positive economic effects may also demonstrate national importance. The Petitioner does not argue nor establish that an endeavor's potential to employ one U.S. worker is equivalent to a "substantial positive economic effect." In addition, *Dhanasar*'s use of the plural term in "significant potential to employ U.S. workers" rather than "worker" further indicates an endeavor's potential to hire a solitary worker would not be sufficient to establish national importance. We do not find error in our finding on appeal that the Petitioner has not demonstrated the benefits to the regional or national economy from her proposed endeavor would reach the level of substantial positive effects through employment levels or business activity contemplated by *Dhanasar*.

Petitioner's counsel asserts on motion that [redacted] will have a widespread impact on society that extends beyond their clients as they will not only "offer classes and courses restricted to a physical classroom and her company's clients," but also "aim[] to further the technical field of nutrition in the U.S., which encompasses teaching, research, study groups, training, and public offerings on specialized portals for academic promotion." Petitioner's counsel's brief includes a new plan to disseminate nutritional knowledge through free online courses, an online portal, webinars and workshops, social media, marketing, community outreach and awareness campaigns, and email outreach. Also on motion, Petitioner's counsel indicates the Petitioner's intent to engage in nutritional research initiatives and policy development. On these bases, Petitioner's counsel argues the Petitioner's own nutritional teaching and research activities, unlike the petitioner in *Dhanasar*, rises to the level of national importance as she aims to further the nutritional field in the United States. However, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 553, 534 n.2 (BIA 1988). The record, apart from counsel's statements on motion, does not corroborate the Petitioner's intent to engage in nutritional research and policy work. Similarly, Petitioner's counsel's assertions on motion regarding the company's dissemination of nutritional knowledge exceeds the intentions presented previously in the company's business plan. A petitioner must establish eligibility for the benefit they are seeking at the time the petition is filed. *See Matter or Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, and in keeping with the

requirements of the motion to reconsider before us, we consider the record evidence only insofar as it relates to our July 2024 appeal decision.

The Petitioner's previously submitted business plan, in relevant part, indicated [redacted] would impart consulting for schools and supermarkets, courses and training for employees, and workshops and seminars for kids and their parents with some seminars and workshops "broadcasted online to leverage and maximize the value of the events" and some "developed for the online environment." In our appeal decision, we concluded the Petitioner had not demonstrated her proposed endeavor would sufficiently extend beyond her company and its clientele to impact the field of nutrition more broadly, at a level commensurate with national importance. On motion, Petitioner's counsel argues that though the business plan does not explicitly assert its online services would be accessible beyond its clients, it implies the online seminars, workshops, and webinars would be available to a broader audience. It is noted the business plan specifies [redacted] website would be online scheduling-capable for *commercial* attendance, which appears to indicate the company's intent to further monetize its online services to customers. However, in any case, the Petitioner has not demonstrated disseminating her nutritional workshops, seminars, and webinars more broadly, even outside her clientele, would have broader implications for the field of nutrition. *Dhanasar* explains that teaching will not necessarily impact the field more broadly, in a manner which rises to the level of national importance. *See Matter of Dhanasar* at 893. Like teaching, in which the benefits generally affect the students taught, the services and training the Petitioner plans to provide benefit would benefit her clientele and website viewers.

The Petitioner also asserts our appeal decision erroneously noted the Petitioner had not provided sufficient evidence in support of her proposed endeavor, as it is not required to "demonstrate through evidence the commencement of such plans nor financial founds [*sic*] to do so." However, our appeal decision required neither commencement of the Petitioner's proposed endeavor nor evidence of financial funding. Rather, we appropriately examined whether the evidence sufficiently demonstrated the proposed endeavor would offer a substantial economic benefit or impact the field more broadly, to the level of national importance.

A motion to reconsider must: 1) state the reasons for reconsideration, 2) be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy, and 3) establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider that does not satisfy these requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

Upon review, our appeal decision thoroughly analyzed the national importance requirements laid out in the *Dhanasar* framework and considered the entirety of the record in the Petitioner's case. As the Petitioner has not established our prior decision dismissing her appeal contained errors of law or policy, or that the decision was incorrect based on the record at the time of the decision, it does not meet the requirements of a motion to reconsider.

III. CONCLUSION

Although the Petitioner submitted evidence in support of the motion to reopen, the Petitioner has not established this evidence consists of "new facts." On motion to reconsider, the Petitioner has not

established our previous decision was based on an incorrect application of law or policy at the time we issued our decision or otherwise incorrect. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.