U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34904938

Date: DEC. 4, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a compliance manager, 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 Petitioner 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 compliance manager, initially sought to work as a compliance manager in the financial field in the United States. In response to a request for evidence from the Director, the Petitioner submitted a business plan stating she intends to serve as investor and CEO of a company in the United States to provide "specialized consultancy and training focused on [anti-money laundering] compliance to U.S. companies and businesses needing secure, reliable, trustworthy safety in their financial operations and transactions within the U.S. market."

The Director concluded the Petitioner had not demonstrated the national importance of her proposed endeavor, 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

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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).

On motion, the Petitioner submits the Director's petition denial decision, our decision dismissing the appeal, a copy of *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), and an article entitled "From Compliance to Careers: A Deep Dive Into the AML Job." 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 proceedings, which includes within the original petition. The Director's petition denial decision, our decision dismissing the appeal, and a copy of *Matter of Dhanasar* do not state new facts and therefore do not constitute "new facts" for the purposes of a motion to reopen. Similarly, the article submitted by the Petitioner on motion relates to how to "build a successful and fulfilling career in the dynamic field of AML." The submitted article does not mention the Petitioner, her company, or otherwise speak to the potential prospective impact of her own proposed endeavor. The Petitioner makes no assertion on motion as to how this submitted evidence contains new facts that establish her eligibility. 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

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.

On motion, the Petitioner contests the Director's initial denial of her petition, asserting the denial decision "was clearly incorrect based on the evidence in the record of proceedings at the time of its issuance." The Petitioner claims the Director's decision incorrectly applied the relevant law, regulations, and policies, and requests her motion to reconsider be granted on this basis. However, the Director's decision is not the decision before us here. A motion's scope is limited to the "prior decision" and the "latest decision in the proceeding," which, in this case, is our appeal dismissal decision. 8 C.F.R. § 103.5(a)(1)(i), (ii).

On motion, the Petitioner also contests the correctness of our prior decision. Specifically, the Petitioner asserts the national interest standard was incorrectly applied, claiming our decision equated the lack of geographical economic implications and potential to employ U.S. workers to a failure to show national importance. The Petitioner contends our decision disregarded any submitted evidence indicating her proposed endeavor impacts a national initiative or a matter of national importance. The Petitioner also asserts our decision did not establish "how each individual requirement in the already established list of national importance criteria is taken into consideration." Initially, the national importance criteria referenced by the Petitioner do not constitute requirements to demonstrate national importance, as the list is not exhaustive nor requires each criterion to be established. In addition, in our decision, we explicitly considered non-economic evidence submitted by the Petitioner regarding her industry, including reports and articles. After reviewing the evidence of record, we concluded her own proposed endeavor does not rise to the level of national importance.

The Petitioner asserts her proposed endeavor has national importance as she intends to develop a firm focused on anti-money laundering compliance that will: support financial security and institutions, assist in regulatory compliance for its clients, defend against illicit fund infiltration and economy destabilization, contribute to global security and consumer confidence, and transfer knowledge to its clients. As in our previous decision, we acknowledge the many benefits provided by the field of financial regulation and compliance, including its national implications and effect on societal welfare, as highlighted by the Petitioner and discussed above. However, as stated in our appeal decision, when determining the national importance of a proposed endeavor, we focus, not on the specific area or field at issue, but the specific endeavor a petitioner proposes to undertake. *See Matter of Dhanasar* at 889. Here, the Petitioner has not demonstrated that the potential prospective impact of her specific endeavor would impact the financial regulation and compliance industries more broadly, at a level of national importance.

On motion, the Petitioner asserts her endeavor includes entrepreneurship, "at a time when entrepreneurship seems to be dwindling in the U.S."[1] The Petitioner claims she aims to establish her firm in Florida, where "small businesses are of paramount importance to local economy as they provide nearly two-thirds of the net new private jobs in state. . .." The Petitioner asserts she has demonstrated the general positive economic impact of her proposed endeavor, and our decision erred in focusing on its geographic effects. Contrary to the Petitioner's contention, our appeal decision considered not only geographical impact, but more broadly whether the "economic activity directly resulting from her proposed endeavor would rise to the level of national importance." In our decision, we noted the Petitioner's business plan does not provide sufficient explanation for the basis of her economic projections, including revenue and job creation, and does not establish the company would

[1] The Petitioner also asserts on motion that her endeavor is unique due to her "diverse professional background" and her "proven superior performance in her field, professional achievements, and expertise." However, these factors relate to the second prong of the *Dhanasar* framework. *Matter of Dhanasar*, 26 I&N Dec. at 890. The second prong of the *Dhanasar* analysis examines whether the petitioner is well positioned to advance the proposed endeavor and shifts the focus from the proposed endeavor to the individual. *Id.* As the second prong was not discussed in our previous decision, it is not appropriate for us to consider it here on motion.

operate on a scale rising to the level of national importance. Similarly, the economic assertions made on motion contain figures regarding small business economy in Florida but do not provide sufficient information or explanation to establish her own proposed endeavor would have substantial positive effects in that environment.

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 has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility or that he submitted "new facts." On motion to reconsider, 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. Therefore, the motions 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.