U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35140105

Date: DEC 04, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner 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 her eligibility for the requested national interest waiver. We dismissed a subsequent appeal. The matter is now before us on a 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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings (the dismissal of the appeal). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

In our appellate decision, we agreed with the Director that the Petitioner did not meet the first prong of the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). We determined the Petitioner's endeavor of operating a consulting and advising company focused on the internationalization of business between Brazil and the United States was substantially meritorious, but concluded that the record did not establish its national importance under the *Dhanasar* framework. Specifically, while we acknowledged the services the company intended to provide, including strategic planning, market analysis, advice on regulatory and legal issues, human resources consulting, contracts support, and training, we concluded the company's operations would not result in broader implications at a level commensurate with national importance contemplated in *Dhanasar*. *Id.* And while we acknowledged the Petitioner's assertions that her endeavor aligned with government initiatives surrounding economic expansion and global competitiveness, as well as her claim that her

company could promote international trade and strengthen bilateral relations with Brazil, we explained that the evidence and articles provided did support her assertions of her company's broader prospective impact.

Additionally, we determined that the record did not support the Petitioner's assertions on appeal regarding the broader economic impact of her company. We explained that she did not provide a basis for her company's projected employment and financial calculations, and identified discrepancies between the projected financials in the record. Yet, even disregarding these discrepancies, we concluded that the Petitioner did not establish these projections showed her company would result in substantial positive economic effects discussed in *Dhanasar*. *Id.* at 890. Accordingly, because the Petitioner did not meet the first prong of the *Dhanasar* analytical framework, we concluded that she was not eligible for a national interest waiver, and reserved her appellate arguments regarding the remaining *Dhanasar* prongs.[1]

On motion, the Petitioner generally disagrees with our prior decision, asserting that we imposed novel substantive and evidentiary requirements and did not adequately consider the evidence under the preponderance of the evidence standard. As an example of this, the Petitioner asserts that the *Dhanasar* framework does not require a petitioner to establish that their endeavor will succeed, but only that it has the potential to result in significant beneficial effects to the country. Notably, however, our decision did not mandate the Petitioner to establish that her endeavor would succeed, rather we concluded that the Petitioner did not establish that the *prospective* impact of her endeavor would result in broader implications to the field commensurate with national importance, or otherwise result in substantial economic effects contemplated in *Dhanasar*.

Moreover, on motion the Petitioner explains the discrepancies among her company's financial projections, stating that these were "revised based on additional market research and consultations with financial experts"; however, while she addresses the inconsistent projections, she does not establish that we erred in concluding that the company would not result in substantial economic effects as contemplated in *Dhanasar*. While we acknowledge the Petitioner's claims on motion that, because she established that her company had the significant *potential* to employ U.S. workers, the business plan established its national importance under *Dhanasar*, we disagree. While *Dhanasar* utilizes the phrase "potential" to employ U.S. workers, it does not provide that simply having the potential to create a nominal number of jobs is the standard that petitioners must meet to demonstrate the proposed endeavor has national importance. The *Dhanasar* precedent offers additional context relating to economic effects (such as job creation) in that it requires the endeavor to have "*significant* potential to employ U.S. workers or [have] *other substantial* positive economic effects, particularly in an economically depressed area." (*Dhanasar*, 26 I&N Dec. at 890) (emphasis added). Accordingly, the consideration of the employment of U.S. workers should be evaluated as to whether it also has a *substantial* economic effect. Here, the Petitioner has not shown we erred in our determination.

Additionally, in response to our determination that the Petitioner did not provide an explanation regarding whether the specialized knowledge or training that her company could impart to her clients

[1] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also 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).

would result in broader implications to the field, she asserts that by training U.S. businesses her company would contribute to the development of a more skilled labor force, which would result in positive ripple effects across various sectors. However, in our decision, we explained that the record did not show how any training, even if beneficial to her direct clients, would result in broader implications to her field. Rather, we determined that this was similar to the petitioner's teaching activities in *Dhanasar*, which we determined would not impact his field more broadly. On motion, the Petitioner does not address this conclusion or otherwise establish we erred in making this conclusion.

The Petitioner has not identified an erroneous conclusion of law or fact in our appellate decision, the decision that is the subject of this motion. Our prior decision properly analyzed the Petitioner's assertions regarding her proposed business and services, and considered the evidence in the record. The Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; the motion must demonstrate how we erred as a matter of law or policy. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party seeks reconsideration by generally alleging error in the prior decision). Consequently, we have no basis for reconsideration of our decision and the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.