U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35193089

Date: DEC. 05, 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 qualifies as an advanced degree professional, but he did not establish that a waiver of the job offer requirement is in the national interest. We dismissed a subsequent appeal and combined motions to reopen and to reconsider.[1] The matter is now before us again on combined motions to reopen and to reconsider.[2]

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.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

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).

[1] For this prior motion, the Petitioner submitted two separate motions a day apart with identical information under receipt numbers [redacted]. We issued two decisions. The Petitioner filed this motion on our prior decision under receipt number [redacted]

[2] Although the Form I-290B, Notice of Appeal or Motion, marks only the box for a motion to reconsider, the Petitioner submitted an additional page two for the Form I-290B marking the box for a motion to reopen. Her statement submitted in support references a motion to reopen and a motion to reconsider. Therefore, we will review the instant motion as combined motions to reopen and to reconsider.

The scope of any motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Thus, our analysis for these combined motions is limited to the following: (1) whether the Petitioner establishes that the dismissal of the previous combined motions was based on an incorrect application of law or policy; or (2) whether the Petitioner presents a new fact, supported by evidence, that shows proper cause to reopen our decision on the previous combined motions. 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). Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. See INS v. Doherty, 502 U.S. 314, 323 (1992) (citing INS v. Abudu, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." See INS v. Abudu, 485 U.S. at 110.

In determining whether a petitioner merits a discretionary waiver of the job offer requirement "in the national interest," Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. Dhanasar states that USCIS may, as matter of discretion,[3] grant a national interest waiver if the petitioner demonstrates that the proposed endeavor has both substantial merit and national importance; the individual is well-positioned to advance their proposed endeavor; and on balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Petitioner is a nurse who proposes to continue to work in the United States in her field. As noted above, the Director denied the approval of this petition. In our decision dismissing the appeal, we agreed with the Director's decision that the Petitioner did not demonstrate the national importance of her proposed endeavor under the first prong of the Dhanasar analytical framework.[4] We dismissed the Petitioner's combined motions as they did meet the applicable requirements. 8 C.F.R. § 103.5(a)(4). We incorporate our prior decisions by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion.

Here, the Petitioner contests the correctness of the initial petition and our subsequent decisions. In our latest motion decision, we dismissed the Petitioner's motion to reopen concluding her submission of new documentary evidence, specifically her plan describing her expanded proposed endeavor, did not constitute new facts with the potential to have the claimed broad impact in her field commensurate with national importance. In addition, we noted that her new plan for her proposed endeavor may be a material change to what she initially proposed in her petition and, therefore, does not establish her eligibility at the time of filing.

In dismissing the motion to reconsider, we concluded that the Petitioner did not specify any error in our application of Dhanasar or any other legal error misapplication of policy in our appeal decision.

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[3] See Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[4] We reserved our review of the Petitioner's eligibility under *Dhanasar's* second and third prongs. See INS v. Bagamasbad, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).

A. Motion to Reopen

The Petitioner submits new documentary evidence to establish her eligibility for the national interest waiver under the Dhanasar framework. Specifically, the Petitioner submits recommendation letters relating to her professional experience, emails indicating her eligibility and expected test date for her registered nurse examination, and an employment offer letter. The new evidence, she claims, demonstrates her professional qualifications, experience, and progress towards her endeavor, making her well-positioned to advance her proposed endeavor.

The Petitioner's arguments and new evidence, however, focus on the initial petition decision, instead of discussing our latest motion decision. For instance, her brief states, "[t]he motion to reopen and reconsider is based on the premise that the initial decision may have overlooked or underappreciated the depth and scope of [her] contributions and their alignment with the national interest." The Petitioner's brief does not reference our latest motion decision and does not identify how new facts and evidence show proper cause to reopen the previous combined motions.

Moreover, the Petitioner's new evidence and claims are not relevant to demonstrating the national importance of her proposed endeavor under *Dhanasar's* first prong, but instead are pertinent to whether she is well-positioned to carry out her proposed endeavor under *Dhanasar's* second prong. She emphasizes that her education and her more than 25 years of professional experience would have a broad impact in addressing the shortage of nurses in the United States and healthcare access for underserved and immigrant communities. Such new evidence and claims showing her professional qualifications, experience, and progress towards carrying out her endeavor relate to *Dhanasar's* second prong, which "shifts the focus from the proposed endeavor to the foreign national." Matter of Dhanasar, 26 I&N Dec. at 890. The issue for national importance under *Dhanasar's* first prong is whether the specific endeavor that the Petitioner proposes to undertake has national importance.

In the instant motion to reopen, the Petitioner has not stated new facts or submitted additional evidence to establish that we erred in dismissing our prior motions. The Petitioner's motion mainly reiterates claims she made in her initial petition and in her subsequent appeal and motion. Also, the Petitioner has not demonstrated that the new evidence constitutes new facts sufficient to overcome our prior motion decision. Because the Petitioner has not established new facts that would warrant the reopening of the proceeding, we have no basis to reopen our prior decision. The motion to reopen will be dismissed. 8 C.F.R. § 103.5(a)(4).

B. Motion to Reconsider

The purpose of a motion to reconsider is to show error in the most recent prior decision. The Petitioner's motion to reconsider does not meet this standard.

The Petitioner's brief generally references the USCIS Policy Manual, indicating it provides guidance for adjudicating petitions for national interest waivers. She, however, does not specify how our prior motion decision was based on an incorrect application of the USCIS Policy Manual or any other law or policy. See 8 C.F.R. § 103.5(a)(3). We have already considered the petition under the USCIS Policy Manual and found it insufficient.

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).

III. CONCLUSION

The Petitioner has not established that the dismissal of the previous combined motions was based on an incorrect application of law or policy warranting reconsideration of our decision; or that a new fact, supported by evidence, shows proper cause to reopen our decision on the previous combined motions. We affirm our previous determination that the Petitioner has not established her eligibility under the first prong of the Dhanasar analytical framework, and she is thus not eligible for and does not merit a national interest waiver. We will continue to reserve the Petitioner's eligibility under the second and third Dhanasar prongs. See INS v. Bagamasbad, 429 U.S. at 25-26.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.