U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29999897

Date: FEB. 9, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a math teacher and the owner of an online math tutoring company, 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).

After initially granting the petition, the Director of the Nebraska Service Center revoked its approval, concluding the Petitioner had not demonstrated her qualifications for the EB-2 immigrant visa classification or that she merited a national interest waiver. On appeal, we affirmed the Director's revocation concluding that the Petitioner did not establish she was an advanced degree professional and reserving consideration of the waiver's denial. Subsequently, the Petitioner filed a combined motion to reopen and reconsider. In her prior motion, the Petitioner submitted evidence to establish she qualified for EB-2 classification as an advanced degree professional, however because the evidence did not establish the national importance of her endeavor, we dismissed her motion.

The matter is now before us on a second combined motion 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 motion.

A motion to reopen must state new facts and be supported by documentary evidence.[1] 8 C.F.R. § 103.5(a)(2). The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(ii). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. Attached to her brief is

[1] Motions to reopen immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94, 108 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu,* 485 U.S. at 110.

a digital marketing plan for her company, [redacted],[2] that describes her company's mission, the services it offers, its goals and KPIs, its marketing objectives, its marketing mix, the company's SWOT analysis, its target audience and strategy plan, a sample content calendar for students, and a tactical action plan. However, this digital marketing plan does not meet the requirements of a motion to reopen because it does not establish her eligibility for the national interest waiver. While the digital marketing plan discusses her company's strategy for attracting students and describes the services it offers, it does not speak to or establish the national importance of her endeavor. Therefore, the Petitioner has not established new facts that would warrant reopening of the proceeding, and we have no basis to reopen our prior decision. As the motion to reopen does not meet applicable requirements, we must dismiss it. 8 C.F.R. § 103.5(a)(4).

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.[3] 8 C.F.R. § 103.5(a)(3). As stated above, our jurisdiction on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant a motion to reconsider if it satisfies these requirements and demonstrates eligibility for the requested benefit. 8 C.F.R. § 103.5(a)(3).

On motion, the Petitioner contests the correctness of our prior decision with respect to her request for a discretionary national interest waiver. In support of the motion, the Petitioner relies on our precedent decision in *Matter of Dhanasar,* 26 I&N Dec. 884, 889 (AAO 2016) to assert that her endeavor merits a waiver of the job offer, and labor certification requirement, because it is of national importance. She contends that her endeavor will contribute to U.S. economic growth, address crucial shortfalls in the U.S. education system, foster critical thinking, problem-solving, and cognitive development in her students, and help address the shortage of math teachers. In our prior decision, we determined that the Petitioner's endeavor has substantial merit, but that her evidence was insufficient to conclude her endeavor is of national importance. Our prior decision noted that the Petitioner had not explained "the national implications of her company's projected levels of revenue and workers" and how "her business would benefit an economically depressed area." We further concluded that her evidence was insufficient to conclude her business would "teach math to a nationally important number of U.S. children" and although "kids and parents from all over the country could access her online business . . . her business plan indicates that the company, at least through its initial five years of operation, would tutor only a tiny fraction of U.S. children between the ages of 3 and 8." Finally, we noted the Petitioner did not claim that "her activities would significantly advance the fields of math or math education."

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[2] We note that in all prior submissions, the Petitioner's company was called [redacted] In the digital marketing plan submitted with her motion, her company is named [redacted] The Petitioner is advised, for purposes of any future filings, that a post-adjudication material change to a petition to make a deficient petition conform to USCIS requirements is not permitted. *See Matter of Izummi*, 22 I&N Dec. 169 (Assoc. Comm'r 1998); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971) (standing for the propositions that a petitioner must establish eligibility at the time of filing, and a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts).

[3] The Board of Immigration Appeals (BIA) generally provides that a motion to reconsider asserts that at the time of the previous decision, an error was made. *See Matter of Cerna*, 20 I&N Dec. 399, 402 (BIA 1991). It questions the decision for alleged errors in appraising the facts and the law. *Id.* The very nature of a motion to reconsider is that the original decision was defective in some regard. *Id.*

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.[4] The Petitioner's contentions in her current motion merely reargue facts and issues we have already considered in our previous decisions. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (noting "a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision"). We decline to re-adjudicate the petition anew. The motion to reconsider 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.

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