U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35141014

Date: FEB. 14, 2025

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 either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 Nebraska Service Center denied the Petitioner's Form I-140, Immigrant Petition for Alien Workers, concluding that while the Petitioner established that she was eligible for the requested EB-2 immigrant classification as an advanced degree professional, she did not establish that she was an individual of exceptional ability or that she merited a national interest waiver. We dismissed a subsequent appeal after withdrawing the Director's determination that the Petitioner established eligibility for the underlying EB-2 immigrant classification as an advanced degree professional because she did not establish that her proposed occupation in the United States required a U.S. baccalaureate degree or foreign equivalent as the minimum requirement for entry into the occupation and thus she was not a "member of the professions." *See* section 203(b)(2)(A) of the Act; 8 C.F.R. § 204.5(k)(1)-(2). We further determined that the Petitioner did not establish eligibility for the underlying EB-2 immigrant classification as an individual of exceptional ability as she did not satisfy three of the six categories of initial evidence as required in 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Finally, we determined that the Petitioner did not establish eligibility for a national interest waiver because she did not establish her proposed endeavor was nationally important as is required under the first prong of the three-prong analytical framework in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) for adjudicating such waivers. 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 motions.

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 appeal, we reviewed the record, including letters from former employers, professional and financial documents, a personal statement, a business plan, a letter of recommendation, and an expert opinion letter. We concluded that the Petitioner had not established that her proposed endeavor to operate a company as a real estate broker and sales agent was nationally important. Specifically, we noted that the articles submitted generally related to the importance of the real estate industry rather than the proposed endeavor she proposes to undertake; that the record did not include relevant, probative evidence to corroborate her claim that the services offered by the proposed endeavor would foster home ownership, and even if they did, she did not show that that the endeavor would result in broader implications for the real estate industry; and that the evidence did not establish the proposed endeavor had significant potential to employ U.S. workers or will have substantial positive effects commensurate with national importance, as contemplated in *Dhanasar*.

On motion, the Petitioner does not assert new facts and instead restates information provided in her business plan and a letter of recommendation that we previously considered and submits a new letter of recommendation that discusses her qualifications as a property manager as well as five previously submitted letters that generally confirm her employment history. The new letter does not address how the Petitioner's proposed endeavor offers original innovations to advance, or otherwise will have broader implications in, the field of real estate, or is at a level that would have national implications in that field. The letter also does not address any economic effects that may result from the endeavor and is therefore insufficient to establish the proposed endeavor has significant potential to employ U.S. workers or has other substantial positive economic effects to demonstrate its national importance. *Id.* at 890. As noted above, we may grant a motion to reopen that states new facts, is supported by documentary evidence, *and* demonstrates eligibility for the requested immigration benefit. 8 C.F.R. § 103.5(a)(2). The Petitioner's reproduction of information from her business plan and an expert opinion letter, as well as the new letter provided on motion, do not establish by a preponderance of the evidence that her proposed endeavor is nationally important. As the Applicant has not established on motion that she is eligible for a national interest waiver, she has not established that her motion to reopen should be granted.

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). As stated above, 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.

The Petitioner claims we erroneously concluded that she did not establish her eligibility for a national interest waiver and asserts that she satisfies all three prongs in the *Dhansar* analytical framework. The Petitioner generally claims that the record, including her business plan and an expert opinion letter, is sufficient to establish her proposed endeavor has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, and

therefore is nationally important and satisfies the first prong in the *Dhanasar* analytical framework.[1] The Petitioner does not however specifically address where we misapplied law or policy in dismissing her appeal or otherwise provide persuasive arguments or cite to pertinent precedent decisions to support her claim that we erred in our prior determination.[2] *See e.g.*, *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("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…."). The Petitioner therefore has not established that our prior decision on the national importance of her proposed endeavor was based on an incorrect application of law or policy, or that it was incorrect based on the evidence then before us and therefore has not met the requirements for a motion to reconsider. 8 C.F.R. § 103.5(a)(3).

The Petitioner raises additional arguments on motion contesting our separate conclusion that she also did not qualify for underlying EB-2 classification as an advanced degree professional or person of exceptional ability. However, because our determination that she is ineligible for a national interest waiver is dispositive of this motion, we reserve and need not reach her arguments on those issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"). For the same reasons, we decline to reach, as we also did on appeal, the issues of whether she established she was 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 a labor certification, as are required under the second and third prongs of the *Dhanasar* analytical framework. *See id.*

As the Petitioner has not established that her motions to reopen and reconsider should be granted, 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.

[1] We concluded in our previous decision that the Petitioner's proposed endeavor has substantial merit under the first prong in *Dhanasar*.

[2] For instance, on appeal, we concluded that the Applicant's business plan did not provide a sufficient basis for her company's projected number of employees or revenue generation or how those projections were on a scale rising to the level of national importance as contemplated in *Dhanasar*. On motion, the Applicant simply restates the projections to assert the national importance of her endeavor but does not address how our conclusion was in error.