U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 30242137

Date: FEB. 22, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an occupational therapist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish eligibility for a national interest waiver because she did not demonstrate the national importance of her proposed endeavor. We dismissed a subsequent appeal.

The matter is now before us on combined motions to reopen and reconsider. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. 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.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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.

In dismissing the Petitioner's appeal, we recognized the gravity of the topic of healthcare in the United States and acknowledged the Petitioner's assertion that her small business will contribute to

[1] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

improvements in healthcare, noting the Director determined in the denial that her proposed endeavor has substantial merit. However, we also detailed the reasons why the evidence of record did not show how the Petitioner's proposal to operate a small wellness care business will benefit the United States on a national level. We explained that, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. We further observed that the forecasts outlined in the Petitioner's business plan did not establish that the benefits to the regional or national economy would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

We ultimately concluded that the Petitioner has not shown that her proposed endeavor to open a wellness clinic would nationally impact the healthcare industry or benefit the regional or national economy. Since the record did not establish the national importance of the Petitioner's specific proposed endeavor, as required under *Dhanasar's* first prong, she had not demonstrated eligibility for a national interest waiver as a matter of discretion. We also reserved her appellate arguments regarding her eligibility under *Dhanasar's* second and third prongs, as considering them would have served no meaningful purpose. *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). For the sake of brevity, we incorporate our previous analysis of the record and will repeat only certain facts and evidence as necessary to address the Petitioner's assertions on motion. Our previous decision in this matter was ID# 28020213 (AAO AUG. 07, 2023).

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 a statement in which she reiterates the significance of her proposed endeavor to own and operate a women's wellness clinic in [redacted] Virginia. She cites statistics concerning healthcare costs in the United States and the importance of preventative care for women as valuable contributors to the U.S. economy. She also submits information concerning financial incentives offered to new small business owners in Virginia. While some of this material is new to the record, the Petitioner's motion does not provide new facts supported by documentation that establish the national importance of her proposed endeavor. The Petitioner's discussions of the healthcare industry and opportunities for new small businesses in Virginia do not refute or overcome the conclusions in our previous decision. The Petitioner does not sufficiently explain how this information demonstrates that her endeavor will have a national impact. Accordingly, while the Petitioner has offered new evidence, this documentation does not demonstrate new facts showing that she meets the "national importance" requirement of *Dhanasar*'s first prong, and therefore she has not overcome our prior determination. The motion to reopen is therefore dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

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, while the Petitioner reasserts that her proposed endeavor has national importance, she does not contend that our decision to dismiss her appeal was erroneous, nor does she explain whether our decision was incorrect based on the evidence in the record at the time of the decision. We stress that to establish merit for reconsideration of our latest decision, a petitioner must do both of the following: state the reasons why the petitioner believes the most recent decision was based on an incorrect application of law or policy; specifically cite laws, regulations, precedent decisions, and/or binding policies they believe we misapplied in our prior decision. The Petitioner has not done so here.

In light of the above, we conclude that this motion does not meet all the requirements of a motion to reconsider and must therefore be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.