U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37074052

Date: FEB. 25, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a compliance manager, 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 that waiver of the required job offer, and thus of a labor certification, would be in the national interest. We dismissed a subsequent appeal. We also dismissed a subsequent combined motion to reopen and motion to reconsider. The matter is now before us on a second 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). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the motions.

In denying the initial petition, the Director concluded that the Petitioner had not demonstrated the national importance of her proposed endeavor, among other eligibility requirements. On appeal, we agreed that the Petitioner had not demonstrated the national importance of her proposed endeavor and reserved the Petitioner's remaining eligibility requirements under the *Dhanasar* framework. Regarding the Petitioner's first motion to reopen, the Petitioner did not submit new evidence relevant to the reasons for our dismissal of her appeal. Therefore, we dismissed the motion to reopen because it did not contain documentary evidence of new facts, as required. We also dismissed the Petitioner's motion to reconsider because she did not demonstrate that our conclusion that she had not established the national importance of her endeavor was incorrect according to law and policy.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (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 this motion to reopen, the Petitioner submits a copy of our decision dismissing the appeal, her original petition (I-140), a copy of *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), and three articles published in December 2024 after our decision dismissing the Petitioner's first motion. These articles are titled: "Money Laundering Poses a Risk to Financial Sector Stability," "Financial crime: How banks and other financial institutions protect themselves against criminals," and "Entrepreneur-Led Economic Development: A New Strategy for Generating Local Growth and Productivity." We interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceedings, which includes within the original petition. The Petitioner's submissions on motion, most of which were previously a part of the record, do not state new facts and therefore do not constitute "new facts" for the purposes of a motion to reopen. Similarly, the submitted articles do not mention the Petitioner, her company, or otherwise speak to the potential prospective impact of her proposed endeavor. The Petitioner makes no assertion on motion as to how this submitted evidence contains new facts that establish her eligibility. As the Petitioner's motion does not contain "new facts," it does not meet the requirements of a motion to reopen.

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. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion to reconsider, the Petitioner re-asserts her eligibility for the national interest waiver and renews claims made below. The Petitioner claims that our motion dismissal should have afforded more evidentiary weight to the subject matter of her proposed endeavor, but the Petitioner does not cite a relevant authority to show error or on our part in this regard. That decision, along with the appeal dismissal, explained that the determination of national importance focuses on the specific endeavor a Petitioner proposes to undertake, rather than the specific area or field. *See Matter of Dhanasar* at 889. Contrary to the Petitioner's assertions, and as explained in our previous decision, there is no "established list" of requirements to demonstrate national importance, nor is there a "national initiative" requirement.

The Petitioner additionally argues that our decision "derogatorily and erroneously [equated] the lack of geographical implication and the lack of potential to employ U.S. workers as failure to show national importance." Although the Petitioner made economic assertions regarding the small business economy in her first motion to reconsider, we concluded that the Petitioner had not provided information or an explanation to establish her own proposed endeavor would have substantial positive effects in that environment. In the instant motion, the Petitioner again provides figures regarding small businesses in the Florida economy. However, she similarly does not provide corroborating evidence of her claims that *her specific endeavor* would contribute to the local economy on a scale reflecting national importance. Moreover, even assuming these contentions were supported, they necessarily could not demonstrate that our previous decision was incorrect according to the evidence in the record at the time.

Next, the Petitioner contends that *Matter of Dhanasar* does not require "as a single and essential requirement" proof of "concrete benefits in economically depressed areas". However, the Petitioner has not explained how our decision dismissing her first motion required such a showing. As we stated in that decision, we explicitly considered non-economic evidence submitted by the Petitioner regarding her industry.

The Petitioner also makes several arguments related to the Director's decision and our decision dismissing the appeal. However, these are not the decisions before us here. A motion's scope is limited to the "prior decision" and the "latest decision in the proceeding," which, in this case, is our first motion dismissal decision. 8 C.F.R. § 103.5(a)(1)(i), (ii).

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility or that he submitted "new facts." On motion to reconsider, 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. Therefore, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

Although the Petitioner has submitted additional documentation in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, 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. Notably, the Petitioner's contentions in her current motion largely 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) ("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 will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied and the motion 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.