U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36191438

Date: FEB. 25, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a business 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 the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the subsequent appeal agreeing with the Director that the record did not demonstrate her eligibility for the requested national interest waiver. 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 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 to reopen, the Petitioner submits a brief. She does not, however, introduce any new evidence, or a new fact supported by documentary evidence to establish the national importance of her proposed endeavor. We will therefore dismiss the 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). 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, the Petitioner contests the correctness of our prior decision and asserts it was "improperly dismissed based on an incorrect analysis of the facts and applicable law." The Petitioner further "seeks a thorough re-evaluation of the evidence demonstrating that the proposed endeavor meets the standards of national importance."

Specifically, the Petitioner takes issue with our assessment of the expert opinion letter and recommendation letters, which she asserts shows that her work rises to the level of national importance. She contends that "[h]er innovative strategies and advanced knowledge are integral in elevating the endeavor to national importance." However, as discussed in our previous decision, the Petitioner's skills, expertise, and abilities relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016).

Additionally, the Petitioner objects to our statements that the evidence did not show her business would "[s]ubstantially impact job creation and economic growth, either regionally or nationally" and "[p]rovide substantial economic benefits to Florida, the region, or the U.S. more broadly at a level commensurate with national importance." She argues that our decision did not adhere to the plain language of the law by changing the language of the examples set out in *Dhanasar* thereby creating an "ultra vires requirement." Under *Dhanasar*, she states that an endeavor may show national importance if it has "significant potential to employ U.S. workers." *Id.* at 890. The Petitioner argues that instead of adhering to *Dhanasar's* plain language which has no reference to the quantity of U.S. workers, we shifted the word "significant" to "[s]ubstantially impact job creation and economic growth, either regionally or nationally." Moreover, the Petitioner contends that "employment does not need to occur regionally or nationally." She argues that we "altered the legal interpretation" of *Dhanasar* by "shifting the requirement from the proposed endeavor having substantial positive economic effects to mandating that it provide substantial economic benefits to Florida, the broader region, or the U.S., and at a level deemed commensurate with national importance." On motion, the Petitioner references her business plan in support of her assertions.

The Petitioner has not persuasively shown that our decision was based on an incorrect application of law or policy. Our statements referenced here were made in the context of analyzing the Petitioner's assertions that her proposed endeavor would have broader implications in the business administration consulting services sector, as claimed in her business plan. Our consideration of these factors was not a discussion of mandatory requirements in the determination of her endeavor's purported national importance but, rather, a discussion of examples showing why the evidence was insufficient to support her claims of broader implications in the industry or nation.

Likewise, our statements related to the Petitioner's prospective employment levels were in the context of analyzing the endeavor's potential prospective economic impacts. For example, we addressed reasons why the evidence, including the employment and financial projections from the business plan, did not sufficiently demonstrate the endeavor would rise to the level of "substantial positive economic effects." Additionally, we note that while a predetermined number of potential employees is not required to show an endeavor's national importance, employing a significant population of U.S. workers in the area or offering other substantial economic benefits through employments levels or business activity may be indicative of an endeavor's "substantial positive economic effects." After considering all these factors and the evidence in the record, we correctly concluded the Petitioner had

not adequately demonstrated that the potential prospective impact of her endeavor would rise to the level of national importance. Here, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued it. Accordingly, we will dismiss the motion to reconsider.

The motion to reopen does not comply with the applicable regulatory requirements. Further, the motion to reconsider does not demonstrate that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Consequently, we have no basis for reopening or reconsideration of our prior decision. Therefore, the motions will be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.