U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30291410

Date: FEB. 27, 2024

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 a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the Petitioner's appeal. 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). 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 the aforementioned requirements and demonstrate eligibility for the requested benefit.

In our decision dismissing the appeal, we agreed with the Director that the Petitioner did not meet the first prong of the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). We explained that the Director considered the Petitioner's claims under the three prongs of *Dhanasar* and determined that she only established the substantial merit of her proposed endeavor. Regarding national importance, we noted that the Director's decision reviewed and analyzed the Petitioner's claims including her business plan with employment creation assertions, letters of support, and industry reports and articles and discussed their deficiencies. We stated that the Petitioner's appeal brief generally reiterated the benefits of her profession, her qualifications, and the claimed economic

impacts of her proposed medical clinic(s) and asserted that this information established the national importance of her proposed endeavor. We indicated, however, that she did not provide any new evidence or arguments on appeal to overcome the Director's determination. Accordingly, we adopted and affirmed the Director's decision as it related to *Dhanasar's* first prong.[1]

On motion, the Petitioner contends that our decision "was not adequately substantiated, and the arguments presented in the . . . petition were not duly considered." She requests that we "review and reassess our determination" and that it "be anchored in a particular and substantiated rationale."[2] The Petitioner's motion, however, does not specifically address our determination relating to *Dhanasar's* first prong or establish that it was in error. Instead, the Petitioner makes vague and general assertions that USCIS disregarded unspecified arguments and evidence. Such assertions do not establish that our appellate decision was incorrect, and do not oblige us to re-adjudicate the appeal de novo.

In addition, the Petitioner asks that we take "into account the unique circumstances, intentions, and extenuating factors that have contributed to her present situation," and "reconsider the denial of her Form I-140," but the Petitioner does not identify any specific documents or other pieces of evidence that were overlooked by USCIS, and she does not explain how discussion or consideration of those materials would have changed the outcome of our August 2023 decision. The Petitioner has not demonstrated that our appellate decision was based on an incorrect application of law or USCIS policy and that our decision was incorrect based on the evidence in the record at the time of the decision. In addition, the Petitioner has not offered new evidence or facts on motion to overcome the stated grounds for dismissal in our appellate decision.

The Petitioner has not established new facts relevant to our appellate decision that would warrant reopening of the proceedings, nor has she shown that we erred as a matter of law or USCIS policy. Consequently, we have no basis for reopening or reconsideration of our decision. Accordingly, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and her underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

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[1] *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted this issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Court of Appeals in holding the appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

[2] The Petitioner also requests "consideration for adjustment of status," but that issue is not before us on motion and we have no jurisdiction over that matter. *See* 8 C.F.R. § 103.5(a)(1)(ii).