U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35908771

Date: FEB. 27, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, an urban planner, 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 Texas Service Center denied the petition concluding that the Petitioner did not establish eligibility for a national interest waiver of the job offer requirement for EB-2 classification. Specifically, the Director determined that although the Petitioner had demonstrated her endeavor is of substantial merit, she did not establish her endeavor's national importance under the *Dhanasar* analytical framework. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) (providing a framework for adjudicating national interest waiver petitions).[1] Further, the Director found that the Petitioner did not establish 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. We dismissed a subsequent appeal concluding that the Petitioner did not establish that her proposed endeavor is of national importance. We reserved our decision on whether the Petitioner demonstrated eligibility under *Dhanasar's* second and third prongs. 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). *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). 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.

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

On motion to reopen, the Petitioner submits a brief, letters, supporting articles, and industry reports. The Petitioner asserts that these materials demonstrate the national importance of her proposed endeavor, that she is well-positioned to advance her endeavor, and 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.[2] We disagree.

On motion, the Petitioner specifically argues that we erred in not correcting the Director's formulation of her proposed endeavor. Next, the Petitioner argues that as a result of accepting the Director's formulation of the proposed endeavor, we erred in our national importance analysis. Lastly, the Petitioner argues that we erred in "refus[ing] to analyze other *Dhanasar*[] prongs."

In our dismissal of her appeal, we specifically noted: "The Petitioner argues that the Director mischaracterized her proposed endeavor, acknowledging only that she intended to work at [redacted] Virginia branch but not addressing her plan to develop 15-minute cities. However, the denial reflects that the Director considered the Petitioner's full endeavor." We further noted that the denial acknowledged "the Petitioner's arguments about her 'endeavor of creating livable (15-minute) cites' and explains why she has not established the national importance of her proposed endeavor."

Next, considering her full initial proposal, we determined that while the Petitioner had submitted evidence on an array of topics and initiatives, she had not demonstrated the national importance of starting an urban planning department at her employer's Virginia's branch and working on 15-minute projects nearby. We concluded that the Petitioner did not show how her services would largely influence the field and rise to the level of national importance. Further, we concluded that the evidence did not show how the proposed endeavor would sufficiently extend beyond her own employer and prospective clients. Finally, we concluded that the Petitioner had not demonstrated that her endeavor would have a significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the United States. We noted that the issue is not "whether these topics and initiatives are nationally important. Instead, the Petitioner must demonstrate the national importance of her specific, proposed endeavor."

We acknowledge that the Petitioner submits a new statement on motion, which states that her proposed endeavor is the "15-Minute City model."[3] Regardless of the formulation of her endeavor, she has not demonstrated the national importance of her endeavor, whether both establishing an urban planning office or creating the "15-Minute City model." Nothing presented shows how the proposed endeavor would sufficiently extend beyond either her own employer or her prospective clients or rise to the level of national importance.

As noted above, the scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider newly provided evidence to the extent that it pertains to our latest decision dismissing the appeal. Here, the Petitioner has not provided new facts sufficient to establish that we erred in dismissing her appeal. Because the

[2] Because we conclude that the Petitioner has not demonstrated that the national importance of her endeavor on motion, we need not address whether she has demonstrated eligibility under the second or third *Dhanasar* prongs.
[3] We note that the Petitioner now claims she will be based out of Sweden.

Petitioner has not established new facts supported by documentary evidence, we conclude that she has not met the requirements of a motion to reopen.

On motion to reconsider, the Petitioner argues we erred in dismissing her appeal. A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3). The Petitioner asserts that we erred in not correcting the Director's assessment of the proposed endeavor. Specifically, the Petitioner claims we "assumed [an] incorrect formulation" of her endeavor. Second, the Petitioner asserts we erred in our national importance analysis. Finally, she asserts an incorrect application of law and that we erred in not analyzing the second and third prongs of *Dhanasar*.

Upon review of the Petitioner's brief, we find a marked similarity to the Petitioner's claims on appeal. On appeal, the Petitioner asserted that the Director "mistakenly determined" the nature of her proposed endeavor and, as a result, the Director's analysis of national importance was "completely incorrect." Finally, the Petitioner claimed that the Director's decision was in error because the Director failed to analyze *Dhanasar's* second or third prongs.

The Petitioner claims that our analysis of the national importance of the proposed endeavor was "completely incorrect." She asserts that we did not "analyz[e] evidence of [her] proposed endeavor's national implications within several fields," including broad enhancement of societal welfare and cultural enrichment, and its impact on areas that "a government has described as having national importance" or is the subject of national initiatives. The Petitioner claims we "specifically concentrated on [her] endeavor's substantial positive economic effects." Yet, in our dismissal of her appeal, we correctly evaluated the Petitioner's proposed endeavor by looking to evidence documenting the "potential prospective impact" of the work. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). We also noted that it was not the importance of a specific topic or field, but rather the specific proposed endeavor which must demonstrate national importance. Here, the Petitioner has not demonstrated these factors.

The Petitioner argues that we further erred in our national importance analysis because we accepted the Director's formulation of her proposed endeavor. However, as noted above, the Director's decision included consideration of both the 15-minute project element and the urban planning department at her employer's northern Virginia office. Similarly, both parts of the Petitioner's proposed endeavor were considered on appeal. Therefore, we did not err in consideration of her proposal's national importance.

Regarding the second and third *Dhanasar* prongs, the Petitioner argues we erred because we did not analyze her eligibility. Yet, we did not analyze her eligibility under *Dhanasar's* second and third prongs because we concluded that it would serve no meaningful purpose as the Petitioner did not establish eligibility for a waiver under the first prong. We cited to *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) and to *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n. 7 (BIA 2015) to support our determination. The Petitioner points to no authorities that demonstrate that we erred.

The Petitioner's contentions in the current motion merely reargue facts and issues we have already considered in our previous decision. *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"). 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. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied. The motion will be dismissed. 8 C.F.R. 103.5(a)(4).

Although the Petitioner has submitted additional evidence 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. Therefore, 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.