U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35019347

Date: JAN. 07, 2025

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 or as an individual of exceptional ability, and a national interest waiver of the job offer requirement attached to this classification. See section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Workers (national interest waiver), concluding the Petitioner had not established eligibility for the underlying immigrant classification. We dismissed the appeal. The matter is now before us as combined motions to reopen and to reconsider. 8 C.F.R. § 103.5(a)(2)-(3).

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.

I. 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). A motion that does not satisfy the applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner submits a brief and previously submitted evidence. Because the brief does not assert new facts and no new evidence was submitted on motion, we dismiss the motion to open because it does not satisfy the filing requirements for such a motion.

II. 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. See Matter of Coelho, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

While the Petitioner has established her eligibility for the underlying EB-2 visa classification, she has not demonstrated eligibility for a national interest waiver of the job offer requirement and, as a result, that we should reconsider our decision on appeal.

A. EB-2 Classification

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. In the initial filing, the Petitioner did not specify if she sought EB-2 classification as an advanced degree professional or as an individual of exceptional ability in the sciences, arts, or business. In response to the Director's second Request for Evidence (RFE), the Petitioner argued she was both an advanced degree professional and an individual of exceptional ability. The Director did not analyze the Petitioner's eligibility for EB-2 classification as an advanced degree professional; rather, the Director determined the Petitioner had not established she was an individual of exceptional ability in the sciences, arts, or business and therefore had not established her eligibility for EB-2 classification. On appeal, we withdrew the Director's conclusion regarding the Petitioner's categorical ineligibility for EB-2 classification because the Director did not analyze whether the Petitioner was an advanced degree professional. However, we noted that the Petitioner's academic record did not support that she had a professional degree. We did not further explore whether the Petitioner was an advanced degree professional or qualified for EB-2 classification as an individual of exceptional ability because we concluded the Petitioner had not demonstrated her eligibility for a waiver of the job offer requirement, and thus of a labor certification, under the analytical framework for adjudicating a national interest waiver under Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016), which we determined was dispositive of the appeal.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. Id. The Educational Database for Global Education (EDGE), maintained by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), reflects that a título de cirurgião dentista earned after a four- or five-year course of study in Brazil is the single source equivalent to a first professional degree in dentistry in the United States. The underlying record contains the Petitioner's título de cirurgião dentista diploma; academic record, including her transcript; and a course evaluation report, which was previously overlooked. The record therefore demonstrates that the Petitioner obtained a first professional degree in dentistry, which is the foreign equivalent of an advanced degree, and establishes by a preponderance of the evidence that the Petitioner is eligible for underlying EB-2 classification as an advanced degree professional. We therefore withdraw our prior determination on appeal to the contrary.

B. National Interest Waiver

In our appeal decision, we concluded that Petitioner had not established eligibility for a national interest waiver of the job offer requirement because her proposed endeavor was not well-defined and consistently articulated. Specifically, we concluded the Petitioner materially changed her proposed endeavor after filing her petition from working as an endodontist to becoming an entrepreneur, owning and operating a business entity concerning the training and development of dental assistants. See

Matter of Izummi, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998) (a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements). Consequently, we concluded that given the significant ambiguity in her proposed endeavor, she did not establish the substantial merit and national importance of her endeavor under prong one of Dhanasar.

On motion, the Petitioner asserts that we incorrectly identified her initial intended occupation as an endodontist in finding that her endeavor had materially changed. However, as discussed in our appeal decision, her executed Department of Labor Form, ETA 750 Part B, Employment and Training Administration Application for Alien Employment Certification (ETA 750B), submitted in response to the Director's first Request for Evidence, specifically indicated she intended to work in the United States as an "endodontist."

The Petitioner further asserts that she has "clearly and consistently articulated" that her proposed endeavor includes work in multiple advanced areas within dentistry, and not just as an endodontist, and that her business plan, explaining her proposed endeavor, was submitted prior to the Director's second RFE. At issue is not whether the Petitioner would perform additional dental services outside of being an endodontist, but that she did not state her proposed endeavor involved owning and operating a business intended to train dental assistants until the Director issued a second RFE seeking additional information on her proposed endeavor as an endodontist. Further, the record does not demonstrate that she clearly and consistently articulated her proposed endeavor of becoming an entrepreneur as asserted. Part 6 of the Petitioner's national interest waiver did not contain any basic information about her proposed endeavor and her initial filing did not include a statement explaining her proposed endeavor. Her initial filing included a resume, identifying her specialization in endodontics in Brazil and work in the United States as a dental assistant; an expert letter discussing, in relevant part, the Petitioner's work as a dentist in Brazil, the importance of the dentistry field, and dental professional shortages in the United States; recommendation letters discussing the Petitioner's professionalism, dental knowledge, and skills as a dentist and in patient care; and her autobiography discussing her career as a dentist. Moreover, her response to the Director's first RFE included her ETA 750B, indicating she intended to work in the United States as an endodontist, not as a business owner and entrepreneur as she later claimed. It was not until the Petitioner responded to the Director's second RFE that she submitted a business plan identifying for the first time her proposed endeavor of becoming an entrepreneur owning and operating a business. As discussed in our appeal decision, it was this change in her proposed endeavor from an individual performing services as an endodontist to that of an entrepreneur owning a business chiefly training dental assistants in duties outside of being an endodontist that added significant ambiguity to her proposed endeavor such that we were unable to determine its substantial merit and national importance. We further noted that the company's business plan reflected that no endodontists and only dental assistants, receptionists, information clerks, and film and video editors would be employed in the endeavor. The Petitioner has therefore not established we incorrectly identified her intended occupation as an endodontist.

On motion, the Petitioner also asserts that we erred in not providing a thorough analysis of the substantial merit and national importance of her proposed endeavor. However, as stated, we concluded that the Petitioner had not sufficiently articulated a well-defined and consistent proposed endeavor that would enable us to assess whether her endeavor satisfied Dhanasar's prong one requirements. Regardless, we will address here whether her initial proposed endeavor to work as an endodontist

satisfies prong one. As the Petitioner's proposed entrepreneurship described in her second RFE response to the Director, materially changed her initial proposed endeavor, we need not reach the substantial merit and national importance of her changed endeavor. As noted above, the Director issued a second RFE, explaining that the record lacked evidence demonstrating how the petitioner's employment as an endodontist would have an impact on the U.S. economy, how her employment at a single dental facility would broadly enhance societal welfare or cultural enrichment, or would have broad implications in the healthcare field to establish the national importance of her proposed endeavor as contemplated in Matter of Dhanasar, 26 I&N Dec.at 889. The Petitioner submitted a response brief, and documents in support of the national importance of her proposed endeavor as an entrepreneur. Similarly on appeal and on the instant combined motions, the Petitioner has not provided additional evidence on the national importance of her proposed endeavor to work as an endodontist in the United States.

In assessing national importance, "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." Id. at 889. We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." Id. at 890. Here, the Petitioner's expert letter submitted with the initial petition, focused on the importance of the dental field. In determining national importance, however, 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." Id. The expert letter and the recommendation letters, submitted initially and in response to the Directors' second RFE, also described the Petitioner's knowledge, skills, and abilities, which relate to the second prong of the Dhanasar framework. However, *Dhanasar's* second prong looks to whether an individual is well-positioned to advance their proposed endeavor and "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. Relevant to our analysis here is the first prong of Dhanasar, which focuses on the specific endeavor that the individual proposes to undertake. Id. at 889. While the Petitioner's expert letter also described a shortage of dentists in the United States, the alleged shortage of occupations or occupational skills does not render the Petitioner's proposed endeavor nationally important under the Dhanasar framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process. The Petitioner's recommendation letters and autobiographical statement do not explain the national importance of working as an endodontist. Further, the supporting documentation does not demonstrate how the Petitioner's work as an endodontist would sufficiently extend beyond her prospective clients, to impact the field or the U.S. economy more broadly at a level commensurate with national importance. Accordingly, the Petitioner has not established the national importance of her initial proposed endeavor of working as an endodontist under the first prong of Dhanasar.

The Petitioner's arguments on motion to reconsider do not demonstrate the Petitioner's eligibility for the requested benefit. Consequently, we have no basis for reconsideration of our decision, and the motion to reconsider 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.