U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35854380

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, 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the job offer, and thus of the labor certification, would be in the national interest. We dismissed the Petitioner's subsequent appeal, combined motions to reopen and to reconsider, and a motion to reconsider. The matter is now before us again on a third motion to reconsider. 8 C.F.R. § 103.5.

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 motion.

I. LAW

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).

The scope of any motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Thus, our analysis for this motion is limited to whether the Petitioner establishes that the dismissal of the previous motion to reconsider was based on an incorrect application of law or policy. 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).

In determining whether a petitioner merits a discretionary waiver of the job offer requirement "in the national interest," Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. Dhanasar states that U.S. Citizenship and

Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that the proposed endeavor has both substantial merit and national importance; the individual is well-positioned to advance their proposed endeavor; and on balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Petitioner is a special needs educator at an elementary school who proposes to continue to work in the United States in her field. As noted above, the Director denied the approval of this petition. In our decision dismissing the appeal, we agreed with the Director's decision that the Petitioner did not demonstrate the national importance of her proposed endeavor under the first prong of the Dhanasar analytical framework.[2] We dismissed the Petitioner's subsequent two motions as they did meet the applicable requirements. 8 C.F.R. § 103.5(a)(4). We incorporate our prior decisions by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion.

The purpose of a motion to reconsider is to show error in the most recent prior decision. Here, the Petitioner's current motion to reconsider does not meet this standard.

In dismissing the immediate prior motion to reconsider, we determined the Petitioner did not provide a cogent argument as to how we misapplied the law or USCIS policy in the prior motion to reopen and reconsider, noting that decision analyzed the evidence and arguments with a correct conclusion. In our decision, we cited Matter of O-S-G-, 24 I&N Dec. 56, 58 (BIA 2006), to point out that the Petitioner did not meet the requirements of a motion to reconsider by broadly disagreeing with the conclusions of our prior decisions. We noted that the Petitioner must, instead, specify laws, regulations, precedent decisions, or binding policies believed to be misapplied in the prior decision. Because the Petitioner did not address or provide reasons for reconsideration of the conclusions in our prior decision, we dismissed the motion to reconsider.

In the Petitioner's current motion brief, she mainly contests the correctness of the initial petition and our subsequent appeal decision. She argues that in our most recent motion decision, we misapplied citation of precedent decision Matter of O-S-G-. The Petitioner maintains that her prior motion brief expanded on her prior arguments with new expert opinions, statistical data, and further analysis of how our decision misapplied the Dhanasar analytical framework. The Petitioner's remaining arguments in the current motion brief mainly focus on our appeal decision, asserting our evaluation of the evidence in the record was arbitrary and capricious, as it failed to account for supporting materials that substantiate her claims of national importance. Pointing to and quoting evidence already in the record, including her statement, articles and reports, and opinion letters. The Petitioner essentially repeats her contention that we misapplied the preponderance of the evidence standard of proof in our evaluation of the evidence, citing Chawathe.

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

[2] We reserved our review of the Petitioner's eligibility under *Dhanasar's* second and third prongs. See INS v. Bagamasbad, 429 U.S. 24, 25-26 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

We are not persuaded by the Petitioner's arguments. As discussed in our prior decision, the Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; instead the motion must demonstrate how we erred as a matter of law or policy. See Matter of O-S-G-, 24 I&N Dec. at 58 (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision). We agree with our immediate prior motion decision that evidence in the record had already been reviewed and discussed in prior decisions, and correctly decided the Petitioner did not demonstrate her proposed endeavor is of national importance under Dhanasar's first prong.

The Petitioner has not identified our immediate prior decision was based on an incorrect application of law or policy. See 8 C.F.R. § 103.5(a)(3). We have already considered and analyzed the Petitioner's evidence in the petition under the preponderance of the evidence standard and found it insufficient to demonstrate eligibility for the requested benefit. Our immediately prior motion decision appropriately pointed out that the Petitioner's prior arguments did not specify the reasons why the preceding motion decision was based on incorrect application of law or policy. See Matter of Coelho, 20 I&N Dec. at 473.

While the Petitioner's current motion brief references her having provided "new" evidence with her prior motion brief, namely, expert opinions and statistical data, the record does not reflect she submitted such evidence anew, and instead re-submitted evidence from her initial petition. Our previous decisions correctly found her evidence did not demonstrate eligibility for the requested benefit and therefore, did not warrant reconsideration of our prior decision. The same evidence and assertions do not warrant reconsideration of our prior decision now.

III. CONCLUSION

The Petitioner has not established that the dismissal of the previous motion to reconsider was based on an incorrect application of law or policy at the time we issued our decision, warranting reconsideration of our decision. Therefore, the motion will be dismissed. 8 C.F.R. §103.5(a)(4).

ORDER: The motion to reconsider is dismissed.