U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36145081

Date: JAN. 15, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a nutritionist, 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 that the record did not establish the Petitioner's eligibility for the requested national interest waiver. We dismissed a subsequent appeal as well as a combined motion to reopen and reconsider. The matter is now before us again 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 combined 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). We may grant motions that satisfy the aforementioned requirements and demonstrate eligibility for the requested benefit.

In our first appellate decision dismissing the Petitioner's 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 determined the Petitioner's endeavor of operating a nutrition counseling and consulting services company was substantially meritorious, but concluded that the record did not establish its national importance under the *Dhanasar* framework. Specifically, the Petitioner did not show that her company's services, including educating individuals and helping clients develop healthy dietary habits would result in broader implications at a level commensurate with national importance contemplated in *Dhanasar*. *Id.* We also determined that, contrary to the Petitioner's claims, the Director properly evaluated the Petitioner's endeavor under the *Dhanasar* framework, and considered the prospective impact of her endeavor to the field rather than its geographical breadth.

Additionally, in our decision dismissing her appeal, we determined that the record did not support the Petitioner's assertions on appeal regarding the broader economic impact of her company. We also withdrew the Director's determination that the Petitioner was eligible for the underlying immigrant classification as an advanced degree professional because we questioned whether the evidence in the record supported that determination. While we acknowledged the Petitioner's submission of employment contracts, letters from colleagues, and an employment verification letter, we concluded that the record did not contain letters from current or former employers encompassing five years of progressive, post-baccalaureate experience pursuant to 8 C.F.R. § 204.5(k)(3)(i)(B).

In our most recent decision dismissing the Petitioner's first combined motion to reopen and reconsider, we concluded that the Petitioner did not overcome our determination that she was ineligible for the requested national interest waiver. We acknowledged the Petitioner's submission of additional articles providing general information on nutrition, but determined that these articles did not establish a new fact that would overcome our prior decision. Additionally, we acknowledged the Petitioner's submission of a brief reiterating her claims on appeal, and concluded that the Petitioner did not establish our previous decision was an incorrect application of law or policy. Accordingly, we dismissed the Petitioner's combined motions.

Now on motion, the Petitioner submits a brief which is substantially similar to the brief submitted in support of her previous combined motion to reopen and reconsider, along with additional industry articles and reports discussing the nutritionist field, entrepreneurial development more generally, as well as the importance of nutrition in child development and the reduction of obesity. In addition to repeating her prior assertions made in her motion to reopen and reconsider, the Petitioner reiterates the shortage of nutritionist in the United States. However, these assertions were previously addressed in our first appellate decision when we explained that a shortage of workers in an occupation does not render the Petitioner's endeavor nationally importance under the *Dhanasar* framework. The Petitioner does not address those conclusions or explain why they were erroneous.

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 new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen and reconsider. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion or provided facts that would warrant reopening of the proceeding. Accordingly, we have no basis to reopen our prior decision.

Moreover, on motion, the Petitioner does not identify any error in our decision dismissing her combined motion to reopen and reconsider. Instead, the Petitioner generally disagrees with our decision and reargues facts and issues we have already considered in our previous decisions. The Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; the motion must demonstrate how we erred as a matter of law or policy. *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").

Accordingly, the Petitioner has not established new facts relevant to our decision that would warrant reopening of the proceedings, nor has she shown that we erred as a matter of law or policy.

Consequently, we have no basis for reopening or reconsideration of our decision, and the combined motions 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.