U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31909537

Date: JUL. 02, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a human resources manager, seeks employment-based second preference (EB-2) immigrant classification as 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 record did not establish the Petitioner's eligibility for the requested national interest waiver. We dismissed a subsequent 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 (the dismissal of the appeal). 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 prior decision, 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 properly considered the Petitioner's evidence and determined that the evidence did not establish the national importance of her proposed endeavor of owning and operating a human resource consulting company. And we noted that the Director's decision reviewed and analyzed the Petitioner's evidence and claims of eligibility, including the various industry reports and articles on record. We also explained that, while the Director acknowledged the submission of articles and reports established the "growth and need for HR consultants," these industry articles and reports did not establish the national importance of the Petitioner's proposed endeavor. Because the various articles and publications did not discuss the Petitioner or her specific endeavor, they did not establish

the prospective impact of her endeavor would rise to the level of national importance as contemplated in *Dhanasar*. *See id.* (explaining the determination of national importance "focuses on the specific endeavor that the foreign national proposes to undertake"). Moreover, we concluded that the record did not establish the Petitioner's endeavor would result in substantial positive economic effects or otherwise result in broader implications to the field commensurate with national importance. *See Dhanasar* at 889-890.

On motion, the Petitioner submits a brief with no new evidence and asserts that our dismissal "negates certain material factors present on argument that serve to demonstrate that [the Director] abused their discretion" in denying the underlying petition. Notably, the Petitioner's brief also mischaracterizes our decision, stating that "the AAO devoted a significant portion of its analysis to elucidate upon an alleged 'material change' in the petitioner's circumstances," yet our previous decision does not allege or discuss any apparent material change to the Petitioner's circumstances. Moreover, the Petitioner does not directly address our determination relating to the limited prospective impact of her specific endeavor under *Dhanasar's* first prong or show that it was in error.

The Petitioner also asserts that, by allegedly mandating that she provide the number of employees she intended to hire, our decision improperly imposed "standards and requirements not found or grounded in the precedent law." We disagree. In our prior decision we did not require the Petitioner to employ a specific number of employees. Rather, we explained that the Petitioner's statement that her endeavor would "generate jobs" was not sufficient to establish its national importance, as she did not otherwise indicate how many employees she intended to hire, their respective salaries, or where her company would operate. Nor did she provide other information or evidence establishing how many jobs her specific endeavor would generate. Without this information, the record did not establish, by a preponderance of the evidence, that her endeavor would have "significant potential to employ U.S. workers or [result in] other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 890.

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 policy. 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 Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (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). 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.