U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31745764

Date: JUL. 8, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur in the tourism industry, 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 although the record established the Petitioner qualifies for the EB-2 classification, it did not establish the national importance of her proposed endeavor; the Petitioner is well positioned to carry out her endeavor; or that it would be in the United States' interest to waive the requirement of a labor certification. 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). 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).

In our decision on appeal, we agreed with the Director that the Petitioner had not demonstrated eligibility for a national interest waiver of the job offer requirement for EB-2 immigrant classification because she had not established the national importance of her proposed endeavor. Section 203(b)(2)(B)(i) of the Act; *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). Additionally, we withdrew the Director's determination that the Petitioner qualifies for the underlying EB-2 immigrant classification as an advanced degree professional, as required by section 203(b)(2)(B)(i) of

the Act, because the evidence was insufficient to show that she had gained five years of progressive post-baccalaureate experience.

On motion, the Petitioner submits a brief[1]; a document describing her experience, proposed endeavor, and business plan, the content of which is substantially similar to a previously submitted document; a membership card indicating that she is a travel agent; and a newly dated copy of a previously submitted letter of support.[2] The Petitioner asserts that these are new facts which establish eligibility because they document her education and progressive work history in the field of tourism and the national importance of her proposed endeavor.

The letter the Petitioner resubmits on motion is from her former business partner and co-owner, identifying when they registered and began their business and listing some duties the Petitioner performed. Although the letter bears a more recent date, it is otherwise identical to the original, which we considered in detail on appeal. We noted that the author did not explain or demonstrate how she maintained knowledge of the Petitioner's work experience after departing from her employment in the business, nor did she describe how the listed duties were progressive in nature. Furthermore, we noted that the author appeared to be a family member and their account therefore did not appear to be objective, and the claims in the letter were not corroborated with other independent evidence. The Petitioner does not address any of these concerns on motion. The document outlining her experience and business plan were also submitted and evaluated on appeal, and the membership card does not establish that she meets any of the eligibility criteria.

On motion, the Petitioner also contests the correctness of our prior decision. She asserts generally that we did not evaluate all her arguments and evidence on appeal and therefore violated her Fifth Amendment rights. She reiterates prior claims that she gained more than five years of progressive post-baccalaureate work experience as the owner and president of a travel agency between 1999 and 2019. She also highlights work experience that occurred between 1994 and 1999. As we explained on appeal, the Petitioner's work experience prior to the date her degree was awarded in 2007[3] is not relevant to the determination of whether she gained at least five years of progressive post-baccalaureate experience. Regarding our determination that the Petitioner did not establish the national importance of her proposed endeavor, she states only that we did not properly analyze the impacts of her proposed endeavor and that the evidence presented shows the benefits she could bring to the United States. The Petitioner does not make any further argument or present legal support to 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. Therefore, she has not met the requirements of a motion to reconsider under 8 C.F.R. § 103.5(a)(3).

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the majority was already considered on appeal and she has not established eligibility. On motion to

[1] The brief states in the first paragraph that it relates to a petition filed by another individual. This appears to be a typographical error.

[2] Although counsel states in the brief on motion that the Petitioner "is currently submitting four letters of recommendation," the evidence she provides on motion only includes one letter.

[3] Although counsel claims on motion that the Petitioner earned the foreign equivalent of a U.S. bachelor's degree in 2005, the evidence she previously presented, including among others her academic evaluation and the copy of her diploma, shows her degree was awarded in February 2007.

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 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.