U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31415482

Date: JULY 8, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner is a conflict resolution specialist who seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, as well as a national interest waiver (NIW) 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the record did not establish that the Petitioner merited a discretionary waiver of the job offer requirement in the national interest. The Petitioner appealed that decision, which we dismissed. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon review, we will dismiss the appeal.

I. LAW

To establish eligibility for an NIW, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility for the EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating NIW petitions. *Dhanasar* states that USCIS may, as matter of discretion, grant an NIW 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.

The purely discretionary determination of whether to grant or deny an NIW rests solely with USCIS. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining four U.S. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny an NIW to be discretionary in nature).

A motion to reopen is based on new facts that are supported by documentary evidence, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). If warranted, we may grant requests that satisfy these requirements, then make a new eligibility determination.

II. ANALYSIS

The issues here are whether the Petitioner: (1) has submitted new facts, supported by documentary evidence, to warrant reopening, and (2) has established that we incorrectly applied the law or USCIS policy in dismissing her appeal.

And the matters the Petitioner must first overcome within this motion are limited to the issues discussed within our most recent decision, the decision on her appeal. General support that a motion must first overcome the most recent decision lies within the regulation at 8 C.F.R. § 103.5(a)(1)–(3) where it repeatedly discusses the underlying or latest decision, it limits the time one has to file a motion after the most recent decision, and it references jurisdiction resting with the entity who made the latest decision. This demonstrates that any motion must first address and overcome the most recent adverse decision before the filing party's arguments may move on to any issue that arose in a previous petition, appeal, or motion filing.

In our appeal dismissal, we only provided analysis relating to the national importance element of *Dhanasar's* first prong. In doing so, we discussed a recommendation letter from a judge that described the Petitioner's skills and abilities, but we noted those attributes are better considered under other *Dhanasar* requirements rather than under the first prong. We also considered the Petitioner's proposed endeavor and its potential prospective impact. However, we found the Petitioner did not demonstrate how her proposed endeavor of owning and operating a mediation and conciliation business largely influences the field and rises to the level of national importance.

Lastly, we discussed the proposed endeavor's business plan. We noted the forecasted sales did not establish the benefits to the regional or national economy would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. We further evaluated the proposed endeavor's job creation predictions concluding the Petitioner did not demonstrate that such future staffing levels would provide substantial economic benefits to the regions she specified, nor to the U.S. economy more broadly at a level commensurate with national importance.

In this motion, the Petitioner must first address each of these aspects from our most recent decision and submit new facts supported by evidence demonstrating she has overcome our basis for ruling in an adverse manner on each issue, or she must demonstrate that we made an error in our analysis.

On appeal, the Petitioner notes that mediation and dispute resolution reduce the burden on the U.S. judicial system and explains other positive aspects of this process, but she offered those same

arguments and we considered them when we dismissed the appeal. She also points to the proposed endeavor's business plan offering much of the same reasoning she stated before the Director or in the appeal brief.

Turning to the Petitioner's job creation claims, the business plan predicts the endeavor will create 26 jobs during five operating years. It also projects there will be approximately 7,600 workers in the mediation services industry in the United States in that same timeframe.

In the motion, the Petitioner places a heavy focus on the word "potential" and appears to depart from its intended use in *Dhanasar*, and claims that she only has to show the prospective endeavor's potential to create jobs, regardless of the substance of those figures. While *Dhanasar* utilizes the phrase "potential" throughout and in several ways, it does not provide that simply having the potential to create a nominal number of jobs is the standard that petitioners must meet to demonstrate the proposed endeavor has national importance. First, the *Dhanasar* precedent offers additional context relating to economics in that it requires the endeavor to have "*significant* potential to employ U.S. workers or [have] other *substantial* positive economic effects, particularly in an economically depressed area." (*Dhanasar*, 26 I&N Dec. at 890) (emphasis added). Although *Dhanasar* generally indicates we consider the proposed endeavor's "potential prospective impact," it does not set the bar so low that merely having the potential to have some small positive economic benefit would be sufficient to show it has national importance. Such an interpretation would ignore *Dhanasar's* descriptive language we emphasize above (i.e., significant and substantial), and it would be counterintuitive to the requirement that the endeavor have importance at the national or global level rendering the precedential requirement of "national importance" meaningless. We will not interpret the *Dhanasar* decision in the manner the Petitioner proposes.

Second, the endeavor's job creation potential is a nominal economic benefit at best and falls far short of showing the endeavor has national importance as required in *Dhanasar*. Regarding the proposed endeavor's job creation statistics, the Petitioner's employment claims (26 jobs in a field of 7,600 workers) results in the proposed endeavor's potential to add jobs in this industry at a rate of approximately one-third of one percent. Here, the Petitioner does not explain the relevance of her employment figures to show they have significant potential to employ U.S. workers, consistent with the *Dhanasar* decision.

The Petitioner claims her most important point went unnoticed, access to justice. Our appellate decision quoted the Petitioner's claims relating to this point. The Petitioner notes one of the proposed endeavor's objectives is to provide services to individuals who do not have access to the justice system and for small and medium sized businesses without a budget for legal representation. When we evaluate national importance, the relevant question is not the importance of the industry or profession in which the foreign national will work. Rather, we focus on the "the specific endeavor that the foreign national proposes to undertake" and we look to evidence illustrating the "potential prospective impact" of her actual proposed work. *See id.* at 889.

A petitioner must demonstrate the proposed endeavor will "impact the field . . . more broadly" (*Id.* at 893) and that it has "broader implications" (*Id.* at 889). Within the motions, the Petitioner has not explained how offering mediation services—while continuing to charge a fee—will have a broad impact within the mediation field. The motion further identifies other aspects in which the endeavor

will benefit the United States to include: cost and time savings over federal litigation, flexibility when compared to litigation, improved relationships between the involved parties, and increased productivity and efficiency by removing possible litigation cases from the legal system. While these intended goals are commendable, the Petitioner has not demonstrated they individually, or collectively, reflect the proposed endeavor has national importance. Much like the foreign national's teaching activities did not reflect they would impact the field more broadly in the *Dhanasar* decision, so too do these listed aspects fall short in a similar manner. *Id.* at 893.

III. CONCLUSION

The Petitioner has not demonstrated that we should either reopen the proceedings or reconsider our decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.