U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31585414

Date: JUL. 10, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneurial dermatologist, seeks classification as a member of the professions holding an advanced degree or of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this employment based second preference (EB-2) immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so. *Id.*

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the classification's job offer requirement, and thus of the labor certification, would be in the national interest. We dismissed a subsequent appeal affirming the Director's decision. The matter is now before us on a combined motion to reopen and motion to reconsider.

On motion, the Petitioner submits a brief with no new evidence and claims that we "did not give due regard to all the pieces of evidence presented by the Petitioner." While the Petitioner references certain laws and policies, she has not established that we have erred in applying these laws or policies in our appellate decision. Nor does the Petitioner present new facts or provide supporting documentary evidence.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, "new facts" are facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

Here, the Petitioner presents no new facts, and the motion is not supported by any documentary evidence. Therefore, we will dismiss the motion to reopen.

A motion to reconsider must establish that our 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).

On motion, the Petitioner asserts that "the Service did not give full consideration to the evidence provided by the Petitioner along with the first filing and the RFE response, as it should have been given." In a motion to reconsider we do not consider new objections to the earlier denial. The Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding. Here, the Petitioner alleges the same errors in the Director's decision as she did in her appellate arguments. We addressed these arguments in our appellate decision. However, the Petitioner does not identify any specific error of law or fact in our prior appeal decision. Nor does the Petitioner assert that our prior appeal decision did not follow the regulations and policy guidance.

The Petitioner proffers two issues on appeal. First, the Petitioner appears to argue an issue that has already been settled. She asserts that "she did not alter the fundamental nature of her proposed endeavor" and "the entrepreneurial aspect introduced in our RFE response serves to bolster her ability to deliver and improve upon the proposed benefits outlined in her original petition." In our decision, we acknowledged the Petitioner's substantial additions to the proposed endeavor, but we determined that these "extensive revisions, whilst concerning, did not disrupt the character and nature of the proposed endeavor initially described by the Petitioner." Therefore, the Petitioner has already prevailed on this discrete issue.

Second, she contends that our decision "erroneously argues that the Petitioner's business seeks to join the HUBZone program."[1] And that the Petitioner "is well aware her business does not qualify as a HUBZone company." Consequently, she claims while her business plan signifies a commitment to bring investments to an economically depressed area, thereby contributing to its revitalization, at no point did she claim eligibility for benefits exclusive to HUBZone companies. While we did discuss, at length, the Petitioner's obvious ineligibility for the HUBZone program, we also considered that even if the Petitioner only located or intended to locate her business in the underutilized business zones identified by the Small Business Administration (SBA), and not actually participate in the HUBZone program, such a maneuver would not establish the national importance of her endeavor under prong one of the framework discussed in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). We noted that, the record did not adequately establish the parameters the SBA considers in establishing HUBZones, such that we could evaluate whether the underutilized business zones the SBA identifies would be akin to the economically depressed areas which were of interest to the Petitioner. Even on motion, the record does not establish that, beyond the limited benefits provided to its prospective clients and employees, the Petitioner's proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

The Petitioner has not established proper grounds for reconsideration. 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).

[1] *See* https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361. For the reasons discussed above, the Petitioner has not shown proper cause for reopening the proceedings or reconsideration of our prior decision. Therefore, the Petitioner has not established eligibility for the benefit sought under the facts presented to us.[2]

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[2] A review of the Petitioner's record indicates that she filed a new request for EB-2 classification on October 24, 2023, and it was approved by the Director on February 21, 2024.