U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32452770

Date: JUL. 24, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a nurse, seeks classification as a member of a profession holding an advanced degree. *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 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 Texas Service Center denied the petition, concluding that although the Petitioner qualified for the classification as an advanced degree holder, she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider.[1]

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 her initial filing, the Petitioner outlined her proposed endeavor, which entailed working as a nurse in a hospital in [redacted] Florida, earning a doctorate in nursing from the [redacted] and then becoming a travel nurse, where she would help expand advanced nursing practices to her places of work.

[1] The Applicant submitted two separate motions, this one under [redacted] and a second one a day prior with identical information under [redacted] As such, two decisions will be issued.

In our prior decision, incorporated here by reference, we determined the Petitioner did not meet the first prong of the analytical framework in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). We concluded the Petitioner did not establish the national importance of her proposed endeavor. *See id.* at 889 (providing in relevant part that, to establish eligibility for a national interest waiver, the petitioner must establish that their specific proposed endeavor has national importance). More specifically, we determined the Petitioner did not show her endeavor would have an impact beyond her patients and trainees to the broader field of nursing or healthcare. We indicated further that although her endeavor aligned with national initiatives, she did not provide sufficient evidence to show it would have a significant impact on solving the nursing shortage in the United States or that her endeavor would stand to provide substantial economic benefits in Florida or the United States.

On motion, the Petitioner explains generally how she believes we overlooked or under appreciated the depth and scope of her contributions to the field of nursing and their alignment with the national interest. On motion to reopen, she states that she has identified new evidence not previously submitted with her initial application which directly supports her claims that her endeavor is nationally important. She submits a new plan, expanding on her previous endeavor. Although, the Petitioner submits new evidence, this new evidence does not change our decision for the following reasons. The Petitioner now asserts that to have a broad impact on the nursing field her endeavor will expand to enhance academic and research collaborations; leverage professional associations; develop and disseminate technical manuals and training; create a national platform for professional development; and introduce a new consultancy model for targeted impact. The Petitioner does not provide the specifics needed to show how her new expanded endeavor will be implemented. For example, the Petitioner asserts that she will create a national platform for professional development, which will be an online platform with courses, webinars, mentorship programs, and recognition of nurse achievements. This platform will also have the ability to share cutting edge research and intake user feedback. However, the Petitioner provides no specifics on how this platform will be implemented, whether she can create it herself or whether she would need to hire professionals to help her. In addition, she provided no information on the economics of creating such a platform like what it would cost to create and who would burden that cost. For each new initiative the Petitioner adds to her endeavor, the specifics on how it will be realized are absent. Furthermore, it is not clear, overall, how the Petitioner, working as a full-time nurse, would allocate her time to implement all these initiatives. Finally, the changes in this expanded endeavor are so substantial it may be considered a material change to what was initially proposed. A petitioner must establish eligibility for the benefit they are seeking at the time the petition is filed. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc Comm'r 1998). Thus, as this new evidence does not show she is eligible for the benefit sought, the Petitioner does not meet the requirements of a motion to reopen.

On motion to reconsider, the Petitioner asserts our prior decision was not aligned with the facts and evidence presented. She asserts further that our initial decision was based on an incorrect application of law or policy. However, although the Petitioner presents a new expanded plan for her endeavor, she does not identify any specific misalignment with the initial evidence or errors in our conclusions based on that evidence. Similarly, the Petitioner does not cite any error in our application of *Dhanasar* or specify any other legal error or misapplication of policy in our prior decision.

The Petitioner's submission does not meet the requirements of a motion to reopen because she has not shown her new evidence makes her eligible for the benefit sought. On motion to 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.