U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32171847

Date: JULY 29, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur in the field of nursing and home health care, 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 Texas Service Center denied the petition, concluding that the record did not establish 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; determining that the record did not establish the Petitioner's proposed endeavor was of national importance. Therefore, we also determined a waiver of the required job offer, and thus of the labor certification, was not in the national interest. 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 motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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).

The combined motion does not meet the requirements of a motion to reopen. 8 C.F.R. § 103.5(a)(2). The Petitioner does not identify a new fact, nor does she submit documentary evidence of such a fact in support of the motion. Because the submission does not identify a new fact, it does not satisfy the requirements of a motion to reopen. Therefore, the motion to reopen will be dismissed. 8 C.F.R. § 103.5(a)(4).

Next, 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 analysis for the motion to reconsider is limited to the following: whether we erred in concluding that the record did not establish

that the Petitioner's proposed endeavor is of national importance. We incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion. While we may not address each piece of evidence individually, we have reviewed and considered each one.[1]

In support of the motion, the Petitioner relies on *Matter of Dhanasar,* 26 I&N Dec. 884 (AAO 2016), which set forth the framework in which a petitioner seeking a national interest waiver must provide details about the individual's proposed endeavor in the United States, and demonstrate 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.

Id.

The Petitioner first claims that we erred in our prior decision because we did not provide analysis specifically on the third prong of the *Dhanasar* framework. In our prior decision, we declined to discuss the remaining arguments regarding the third prong of the *Dhanasar* framework because the Petitioner did not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Because the Petitioner's proposed work did not meet the national importance element of the first prong of the *Dhanasar* framework, further analysis of her eligibility under the third prong would serve no meaningful purpose. As noted in our prior decision, we are not required to make findings on issues the decision of which is unnecessary to the results we reach. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n. 7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).

Here, the Petitioner's motion restates many of the same claims and references the same evidence that we addressed in our prior appellate decision for how she establishes the national importance of her proposed endeavor under *Dhanasar's* first prong. The motion generally states that we "did not apply the proper analysis of petitioner's qualifications under the first prong of *Dhanasar* by discounting the national impact of the petitioner's endeavor." The examples given of the Petitioner's prospective impact were specifically raised by the Petitioner in her appeal and were addressed in the appellate decision. For example, in both the appeal and the motion, the Petitioner states her proposed endeavor will have a broader impact on the industry of home health care in part because she will establish a telemedicine and e-visit system that will allow nationwide access to her company's services. We stated in the prior decision that although this may broaden her client base, it does not equate to broader impact to the home health care industry. Similarly, the other assertions we previously addressed that are restated on motion: that the Petitioner would establish a franchise system, that she is committed to research and development of new therapeutic methods, and that she would offer services to a diverse

[1] *See Flores v. Garland,* 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCTS' decision to grant or deny a national interest waiver is discretionary in nature).

population; all further establish that the impact of her proposed endeavor is limited to her direct clients and there is not sufficient evidence to substantiate claims of a broader impact on the industry. In *Dhanasar*, we determined that the Petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Dhanasar*, 26 I&N Dec. at 893. Likewise, the record does not establish that the Petitioner's proposed endeavor will impact the field more broadly.

The Petitioner's contentions in the motion to reconsider reargue facts and issues we have already considered in our previous decision. *See e.g., Matter of* O-S-G-, 24 I&N Dec. 56, 58 (BIA 2006) (explaining that "a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision"). Upon review, we do not find any error or incorrect application of law or policy. The Petitioner cannot meet the requirements of a motion to reconsider by 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. at 58.

The Petitioner did not identify any new facts, or submit any additional documentary evidence of such facts, and therefore, the Petitioner has not established eligibility for a motion to reopen. 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.