U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32567366

Date: JULY 29, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a pediatrician who intends to work in the United States as a nurse, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability in the sciences, arts, or business. 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).

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner 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 the Petitioner's appeal and dismissed a subsequent combined motion to reopen and reconsider. The matter is now before us on a second motion to 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.

I. LAW

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).

The scope of any motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Thus, our analysis for this motion is limited to whether the Petitioner establishes that the dismissal of the prior combined motions to reopen and reconsider was based on an incorrect application of law or policy. 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).

II. ANALYSIS

The Petitioner, a pediatrician in Brazil, proposes to work in the United States as a nurse. As noted above, the Director denied the approval of this petition. The Director determined that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree. We acknowledged the Director's determination and limited our review of the appeal to the Petitioner's eligibility for the national interest waiver.

For the national interest waiver, the Director determined that the Petitioner had not met the three prongs of the analytical framework set forth in Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016). We dismissed the appeal and subsequent combined motion affirming the Director's determination that the Petitioner did not meet *Dhansar's* first prong and reserving arguments on the second and third prongs. See INS v. Bagamasbad, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make "purely advisory findings" and decisions unnecessary to the ultimate decision). We incorporate our prior decisions by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion.

After filing her appeal for this petition, the Petitioner filed a new Form I-140, again requesting a national interest waiver of the job offer requirement. That new petition was subsequently approved in May 2023 with her appeal for this petition being dismissed in July 2023. Her subsequent combined motion asserted that the approval of her new Form I-140 is a material fact demonstrating she meets the legal requirements of a national interest waiver and conflicts with our appeal dismissal. In our prior decision, we dismissed the Petitioner's motion to reopen explaining that USCIS' approval of her subsequent petition based on similar facts is not a material fact that warrants reopening the current petition. Additionally, after reviewing the Petitioner's arguments relating to her eligibility for the national interest waiver, we determined that she did not overcome deficiencies to establish her proposed endeavor is of national importance warranting a reopening of our appeal decision. In dismissing the Petitioner's motion to reconsider, we determined she did not identify specific errors or explain how our prior appeal decision did not follow regulations and policy guidance.

Here, the Petitioner requests we reconsider our prior motion decision claiming errors of law and fact. With respect to our motion to reopen dismissal, she argues we incorrectly applied the law by dismissing the motion after USCIS approved her subsequent petition with similar facts. Specifically, the Petitioner takes issue with our motion decision's reliance on *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988) and *Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988) by stating, "[w]e are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous." She further claims we mistakenly asserted, "we are not bound to follow a contradictory decision of a service center." Louisiana Philharmonic Orchestra v. INS, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000) 2000 WL, *aff'd*, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001).

In her brief on this motion, the Petitioner asserts that our prior decision did not take into consideration a deference of prior approvals policy pertaining to nonimmigrant extension of stay, change of status, and extension of petition validity. See generally 2 USCIS Policy Manual A.4(B)(1), https://www.uscis.gov/policy-manual/volume-2-part-a-chapter-4. Specifically, the policy discusses

the significance of prior USCIS approvals and states that officers should defer to previous determinations of eligibility for nonimmigrant classification in "adjudicating a subsequent petition or application involving the same parties (for example, petitioner and beneficiary) and the same underlying facts." Id. While acknowledging this deference policy relates to prior approvals of nonimmigrant extension requests, the Petitioner argues it would be reasonable to apply the deference legal principle here because the approval of her subsequent petition involved the same facts and did not have a material error, a material change, or new material facts. In addition, she argues "USCIS is bound to follow its own policy and procedures," quoting Morton v. Ruiz, 415 U.S. 199, 235, 94 S. Ct. 1055, 30 L.Ed.2d 270 (1974), "[w]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures."

As acknowledged by the Petitioner, the policy guidance to which she cites is specific to nonimmigrant petitions. This policy only addresses extensions of the validity of nonimmigrant petitions. It does not indicate that adjudicators of immigrant petitions should give deference to prior approvals of nonimmigrant petitions, or that the approval of a nonimmigrant petition creates a presumption of eligibility for immigrant classification. We note that USCIS records reflect that no nonimmigrant petition has ever been filed or approved on behalf of the Petitioner. We further note that the Form I-140 for an EB-2 classification is not a nonimmigrant petition. The Petitioner does not cite to any policy guidance related to immigrant petitions. Nor does she cite to any authority that requires us to apply guidance for adjudicating nonimmigrant petitions to this matter.

Next, the Petitioner maintains we erred in relying on the precedent decisions, Matter of Church *Scientology Int'l* and *Sussex Eng'g, Ltd. v. Montgomery*, because they "are not in line with this case, as they both deal with 'prior' decisions and approvals." Instead, she argues the denial of her petition "was suppressed by a second and 'later' approval decision" and the motion to reconsider "is not to reform a decision, but merely to recognize the validity of the approval decision made subsequently (and not previously) by the exact same [s]ervice [c]enter that denied it in the past." She maintains that our previous motion decision "presupposed" without a factual or legal basis that the subsequent approval decision "would be 'erroneous'" and instead, the subsequent approval decision is "valid and effective, with full and irrevocable authority." We disagree with the Petitioner's arguments.

As indicated in our prior decision, we are not bound by contradictory decisions of a service center. See La. Philharmonic Orchestra v. INS, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000). Therefore, it follows that we are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of approvals that may have been erroneous in separate proceedings. See, e.g, Matter of Church Scientology Int'l, 19 I&N Dec. at 597. Moreover, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the immigrant petition on behalf of the petitioner, we would not be bound to follow a contradictory decision of a service center. See Louisiana Philharmonic Orchestra v. INS, 44 F. Supp. 2d at 803.

Next, the Petitioner argues we erred in not considering the approval of her subsequent petition to be a material fact when it may affect the immigration status sought by the Petitioner, citing Kungys v. United States, 485 U.S. 759, 770-72 (1988). She maintains the approval of her subsequent petition "is a material fact that may affect the immigration status sought by the Petitioner, as the decision issued by the USCIS officer has declaratory and binding authority until it is proven to be erroneous." She

maintains that the reason the subsequent petition was approved is because she is eligible for the benefit sought and thereby meets the three prongs of the Dhanasar framework.

The Petitioner's argument is misplaced. The approval of the Petitioner's subsequent petition with similar facts does not have declaratory and binding authority on this petition. The Director did not issue a precedent or adopted decision, and therefore, it does not require us to follow the same findings in this or other petitions. See 8 C.F.R. §§ 103.3(c), 103.l0(b) (requiring USCIS to follow only precedent decisions in proceedings involving the same issues); see also Matter of Church Scientology Int'l, 19 I&N Dec. at 597.

With respect to our dismissal of the Petitioner's prior motion to reconsider, we determined she did not identify specific errors or explain how our prior appeal decision did not follow regulations and policy guidance. The Petitioner disagrees with our motion determination arguing that her prior motion to reconsider included legal reasons why our appeal decision did not follow regulations and policy guidance, particularly those set out in Dhanasar. The remainder of the Petitioner's motion argues that we erred in applying the three Dhanasar prongs in our appeal decision.

A review of the record shows that the Petitioner submitted two different briefs for the previous combined motion, one for the motion to reopen and a second for the motion to reconsider. Our prior decision on the motion to reconsider did not explicitly address the arguments made in the Petitioner's motion to reconsider brief. Therefore, we will address those arguments now.

In our appeal decision, we agreed with the Director that the Petitioner did not establish her proposed endeavor is of national importance. On motion, the Petitioner argues that we erred in basing this determination on her endeavor's potential to have significant economic effects. She maintains that economic impact is not required for determining the national importance of an endeavor under Dhanasar. Instead, she maintains, the economic impact of an endeavor may be a favorable factor but is not required in determining national importance. She argues her proposed endeavor has national importance based on benefits to health and education, and broadly enhancing U.S. social welfare and the economy.

While we agree with the Petitioner that a proposed endeavor is not required to have significant economic effects, we disagree with how the Petitioner characterizes the basis of our appeal decision. Our appeal decision addressed each of her claims of national importance, which included the Petitioner's emphasis that her work would "contribute to promoting American's prosperity," noting that "[n]ursing has a tremendous potential to generate economic growth in the [U.S.]" and that she would operate "in a key sector of the economy." Our appeal decision analyzed her claims that her endeavor would have economic effects, as well as her additional claims of national importance based on its broad impact on her field and on U.S. social welfare. For instance, she argues that her endeavor is of national importance based on its potential impact on "large populations of children in underserved areas in Utah designated as Health Professional Shortage Areas (HPSA)." She also mentions currently being employed and volunteering in such HPSA area. We addressed this argument in our appeal decision, determining that her potential work as a nurse in an underserved area may relate to the substantial merit of her proposed endeavor; however, a shortage of providers in certain areas or in the United States does not rise to the level of national importance as contemplated in Dhanasar.

Last, her motion stresses her education and experience in healthcare and pediatric fields having the ability to support the healthcare industry and being of national importance. She argues that we mischaracterized evidence relating to her plan to obtain licensing and credentials as being part of her endeavor. She explains that such information shows that her plans would be in compliance with U.S. licensing requirements which is part of her intent to provide "high-quality healthcare services to patients in the [United States] as a nurse with further specialization in pediatric care." We disagree with the Petitioner that we mischaracterized her endeavor. Our appeal decision provided a description of the Petitioner's proposed endeavor as set forth in her statements and professional plan, which included the Petitioner's intent to continue her education, in addition to her "focus on pediatric nursing, providing nursing training, and providing high-quality healthcare services to the Latin population." We re-emphasize here that the Petitioner's reliance on her education and experience relates to the second prong of the Dhanasar framework, instead of speaking to the national importance of the Petitioner's proposed endeavor.

On motion, the Petitioner submits a brief and references evidence already in the record. The deficiencies in the already submitted evidence have been identified and discussed in our prior decisions. The Petitioner's brief on motion does not overcome those deficiencies and does not establish that her proposed endeavor is of national importance. The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. Matter of Chawathe, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. Id.; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, we properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of the evidence.

The Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued it. Accordingly, we will dismiss the motion to reconsider.

III. CONCLUSION

The Petitioner has not established that our dismissal of the combined motion was based on an incorrect application of law or policy warranting reconsideration of our decision. We affirm our previous determination that the Petitioner has not established eligibility under the first prong of the Dhanasar analytical framework and is thus not eligible for and does not merit a national interest waiver. While she also asserts on motion that she meets the second and third Dhanasar prongs, we will continue to reserve those issues. See INS v. Bagamasbad, 429 U.S. at 25-26.

ORDER: The motion to reconsider is dismissed.