U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32102462

Date: JUL. 30, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a human resources and marketing communications specialist, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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. The matter is now before us on a combined motion to reopen and 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 combined 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).

We incorporate by reference our prior analysis in the appeal decision. By way of summation, the Director concluded that the Petitioner did not establish that the proposed endeavor was of national importance, and she did not establish that she was well-positioned to advance the proposed endeavor. Consequently, the record did not indicate, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification. On appeal, the Petitioner asserted that the record established her eligibility for a waiver of the required job offer, and thus of the labor certification.

In our prior decision, we explained that in determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). And while the Petitioner's personal statement reflected her intention to work in the

United States as a human resources and marketing communications specialist, she did not offer sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rose to the level of national importance. Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of national importance because they would not impact his field more broadly. *Id.* at 893. Here, the Petitioner has not shown that her proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the United States.

On motion, the Petitioner does not provide any new, probative fact to establish that we erred in dismissing the appeal. Instead, the Petitioner reiterates information already in the record, and she requests that we contradict our prior decision about the same evidence despite our explanation of why the record does not establish eligibility. The Petitioner claims that we did not provide commentary on the probative research she submitted and states that we ignored this evidence. Contrary to the Petitioner's claim, we are not required to list in painstaking detail each piece of evidence submitted, although we considered everything, and most importantly, we acknowledged that the field of human resources is important, as conveyed by the probative research. *See Medtronic, Inc. v. Daig Corp.*, 789 F.2d 903, 906 (Fed. Cir. 1986) ("We presume that a fact finder reviews all the evidence presented unless [the fact finder] explicitly expresses otherwise."). On appeal, the Petitioner re-submitted the following: personal statement, business plan, expert opinion letters, letter of intent and multiple documents classified as probative research. We have already thoroughly considered this evidence in our prior decision. Because the Petitioner has not provided any new, probative fact to establish that we erred in dismissing the appeal, the motion to reopen will be dismissed. *See* 8 C.F.R. § 103.5(a)(2), (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 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.

On motion, the Petitioner contests the correctness of our prior decision. The Petitioner argues that we erred in not considering precedent opinion and cites to *Matter of E-L-H-*, 23 I&N Dec. 814 (BIA 2005), which establishes that Board precedent decisions apply to all proceedings involving the same issue unless and until it is overruled or modified. The Petitioner then references *Dhanasar*.[1] She states: "As in *Matter of Dhanasar*, [the Petitioner] submitted opinions from two (2) independent experts holding senior positions in academia and industry that describe the importance of her proposed endeavor and, more broadly, the benefits of her work for the United States. In addition, we submitted a detailed Business Plan from [redacted], numerous Letters from U.S. entities urgently relying on [the Petitioner's] services, and probative research to support [the Petitioner's] claims." In *Dhanasar*, "[t]he petitioner submitted probative expert letters from individuals holding senior positions in academia, government, and industry that describe the importance of hypersonic propulsion research as it relates to U.S. strategic interests." *Id.* at 892. In addition, the petitioner "provided media articles and other evidence documenting the interest of the House Committee on Armed Services in

[1] Our appellate decision specifically considered the Petitioner's eligibility under the *Dhanasar* analytical framework's first prong.

the development of hypersonic technologies and discussing the potential significance of U.S. advances in this area of research and development." *Id.* Here, the Petitioner has not established that the facts of the instant petition are analogous to those in the *Dhanasar* precedent decision. For example, unlike the scientific researcher in *Dhanasar*, the Petitioner has not demonstrated that her proposed endeavor offers broader implications in her field.

Instead, as noted above, the Petitioner requests us to contradict our prior decision despite our explanation of why the record does not establish eligibility. Because 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, the motion to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(3)-(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.