U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32499655

Date: JUL. 31, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur and business manager, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability in the sciences, arts or business, and a national interest waiver of the job offer requirement attached to this classification. See section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Workers (national interest waiver) petition, concluding that the Petitioner qualifies for the EB-2 classification, but the record did not establish that a waiver of the Petitioner's job offer requirement is in the national interest. We dismissed the subsequent appeal. The matter is now before us as a motion to reconsider. 8 C.F.R. § 103.5(a)(3).

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 to reconsider.

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).

We hereby incorporate our prior decision by reference and highlight the following as relevant to our analysis of the motion to reconsider. In our decision, we concluded the Petitioner, who proposed to operate a business specializing in nationwide long-distance freight hauling and transportation services for various goods in Florida, had not established the first prong under the framework set forth in Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016), to show that a discretionary waiver of the job offer requirement is "in the national interest," and we reserved the Petitioner's arguments with respect to the second and third prongs. In coming to our conclusion, we analyzed the Petitioner's evidence, including her business plan, and expert opinion letter and explained the Petitioner had not offered

sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance under the first prong of Dhanasar. Specifically, we found that the Petitioner had not shown that the proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the United States where she has not, for example, shown that the area in which her company operates is economically depressed, that she would employ a significant population of workers in that area, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels, tax revenue, or business activity. We further found that while the proposed endeavor may directly impact employees and prospective clients, the Petitioner had not shown how it would impact or benefit the transportation and logistics industry overall.

On motion, the Petitioner resubmits her appeal brief, which asserted, in part, that the Director failed to give due regard to her business plan, letters of recommendation, and other documents and that the Director used an evidentiary standard exceeding that required by the regulations. However, these arguments were fully addressed in our prior decision. On motion, the Petitioner does not specifically address our determination relating to *Dhanasar's* first prong and does not identify any specific error in our prior decision, including our findings in response to the arguments reiterated on motion here. 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).

As a result, the Petitioner has not established that we erred as a matter of law or policy, nor has she established our prior decision was incorrect based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). Consequently, the Petitioner has not established sufficient basis for reconsideration of our decision, and the motion will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and her underlying petition remains denied.

ORDER: The motion to reconsider is dismissed.