U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38870741

Date: JUNE 6, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a management and financial analyst, 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).

Service Center Operations (SCOPS) denied the petition, concluding that 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. The Director dismissed two subsequently filed combined motions to reopen and reconsider. We dismissed a subsequent appeal and the Petitioner's combined motions to reopen and reconsider. The matter is now before us a second time 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). 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 the present motion, the Petitioner does not state any new facts and does not submit any additional evidence. Consequently, the motion to reopen will be dismissed.

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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion to reconsider, the Petitioner again asserts the determination that her company's incorporation documents and operational blueprint constituted a material change to her proposed endeavor misapplied *Matter of Izummi*, 22 I&N Dec. 169 (Comm'r 1988) and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg'l Comm'r 1971). The Petitioner's assertion does not establish any error in our prior

decision. The regulations require a petitioner to establish eligibility for the benefit sought at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition that has already been filed to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. at 175; *see also Matter of Katigbak*, 14 I&N Dec. 45 at 49. The Petitioner asserts she did not alter her proposed endeavor, but substantiated it. She claims this approach has been recognized in *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) which "emphasized the evidentiary continuum." *Rijal* does not support the Petitioner's assertion as it involved an alien seeking first preference employment-based classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability and did not address the issue of establishing eligibility at the time of filing.

The Petitioner further asserts she meets all three prongs of the analytical framework of *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), and that our prior decision misapplied *Matter of Dhanasar* and the preponderance of the evidence standard. The Petitioner claims she meets the first *Dhanasar* prong because her proposed endeavor has national importance due to its "broader significance." She asserts she meets the second *Dhanasar* prong because she submitted "considerable evidence of [her] qualifications and track record." The Petitioner claims she meets the third *Dhanasar* prong because her proposed endeavor is "inherently self-initiated and self-executed" and she is not displacing U.S. workers. However, apart from her business plan and support letters, the Petitioner does not cite any evidence to support her claims. The Petitioner does not specify any misapplication of law or policy in the Director's assessment of her business plan, support letters and other evidence, our prior decision on appeal reviewing the record de novo and affirming the Director's decision, and our prior decision on her first motion to reconsider determining she established no error in our decision on appeal.

The Petitioner's contentions in her current motion reassert claims we have already considered in our previous decisions. *See, e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("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"). We will not re-adjudicate the petition anew.

The Petitioner has not stated new facts or submitted additional evidence in support of her 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. 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.