U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30776329

Date: Jun. 26, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a financial analyst, seeks second preference immigrant classification (EB-2) as an individual of exceptional ability in the sciences, arts, or business, or a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2) (2021). The Petitioner also seeks a national interest waiver (NIW) of the job offer requirement attached to this EB-2 classification. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus a labor certification, when it is in the national interest to do so. Section 203(b)(2)(B)(i) of the Act.

The Director of the Texas Service Center denied the petition, concluding that while the Petitioner qualified as a member of the professions holding an advanced degree, she did not establish eligibility for the discretionary national interest waiver. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). Subsequently, we dismissed the appeal. We concluded that the Petitioner did not show eligibility for the EB-2 classification, because she did not demonstrate she was a member of the professions holding an advanced degree, or an individual of exceptional ability in the sciences, arts, or business. Alternatively, we determined that she did not establish eligibility for the discretionary national interest waiver, because she did not document the requisite national importance of her proposed endeavor.[1] *See Matter of Dhanasar*, 26 I&N Dec. at 889. 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 combined motions.

[1] As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we declined to reach and reserved remaining arguments concerning eligibility. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

A. Motion to Reopen

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).

On motion, the Petitioner submits additional materials, including: (1) an updated resume, (2) a diploma showing that she received her Master of Business Administration degree in December 2021, (3) an April 2023 reference letter from her employer, the vice president in investment research at [redacted] (4) an undated reference letter from a manager at [redacted] (5) a 2024-2029 business plan for [redacted] (6) documents indicating that she became a member of Investments & Wealth Institute and Fixed Income Analysts Society, Inc., in March 2023, (7) documents verifying her employment with [redacted] since 2020, (8) online printout indicating that she wrote a book in Portuguese that is selling for $2 on amazon.com, and (9) pictures of her during presentations and meetings.[2] The Petitioner asserts that these new materials establish her eligibility for the EB-2 classification and the national interest waiver.

As discussed in our previous decision, the Petitioner must demonstrate eligibility at the time of filing her petition, which, in this case, was in January 2021. *See* 8 C.F.R. § 103.2(b)(1). We explained that a visa petition may not be approved at a future date after a petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). The Petitioner's Master of Business Administration degree that she obtained in December 2021, thus, does not support a finding that at the time she filed the petition in January 2021, she had "a United States advanced degree or a foreign equivalent degree," as required under 8 C.F.R. § 204.5(k)(3)(i)(A).

In addition, the evidence does not support a finding that at the time the Petitioner filed the petition, she had "at least five years of progressive post-baccalaureate experience in the specialty." *See* 8 C.F.R. § 204.5(k)(3)(i)(B). The Petitioner claims on motion that her five years of qualifying experience comprised of her "work experience from [redacted] (two years), independent consulting [at [redacted] and [redacted] (two years), and [redacted] (3 years)." However, she acknowledges in her motion statement and updated resume that her employment with [redacted] "commenc[ed] prior to the completion of her bachelor's degree," and that her three years with [redacted] began in June 2020, approximately 6 months before she filed the petition. As such, she has not shown that she had at least five years of post-baccalaureate experience after she completed her baccalaureate studies, but before she filed her petition. Accordingly, the evidence she offers on motion does not support a finding that at the time she filed the petition in January 2021, she had "at least five years of progressive post-baccalaureate experience in the specialty," as required under 8 C.F.R. § 204.5(k)(3)(i)(B). Based on these reasons, the Petitioner has not established she was a member of the professions holding an

[2] On motion, the Petitioner submits a reference letter in a foreign language. She has not offered an English translation for the foreign language letter. The regulation at 8 C.F.R. § 103.2(b)(3) provides that "[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

advanced degree at the time she filed the petition. *See* 8 C.F.R. § 204.5(k)(3)(i); 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. at 49.

Moreover, the evidence the Petitioner offers on motion does not show that she qualified as an individual of exceptional ability in the sciences, arts, or business, when she filed the petition in January 2021, because she has not submitted the requisite initial evidence.[3] In our previous decision, we concluded that the Petitioner submitted evidence meeting two evidentiary criteria, specifically, evidence of "[a]n official academic record showing that the [foreign national] has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability," and "[a] license to practice the profession or certification for a particular profession or occupation." 8 C.F.R. § 204.5(k)(3)(ii)(A), (C). But we explained that she did not submit evidence confirming she met an additional evidentiary criterion.

Relying on her activities and accomplishments that postdate the filing of her petition in January 2021, the Petitioner claims on motion that she has satisfied four additional evidentiary criteria. She argues that she has offered "[e]vidence in the form of letter(s) from current or former employer(s) showing that [she] has at least ten years of full-time experience in the occupation for which . . . she is being sought," because the reference letters confirm that "subsequent to the initial petition submission," she has gained "professional growth and knowledge" and two promotions at [redacted] 8 C.F.R. § 204.5(k)(3)(ii)(B). Similarly, she references her "new salary of $140,000 plus bonuses totaling $45,000 (for a total of $185,000)" as evidence that she "has commanded a salary, or other remuneration for services, which demonstrates exceptional ability." 8 C.F.R. § 204.5(k)(3)(ii)(D). Her employment verification documents indicate that she received her new salary in 2023, and a cash bonus of $45,000 in 2022. In addition, the Petitioner presents evidence of her joining Investments & Wealth Institute and Fixed Income Analysts Society, Inc., in 2023 as "[e]vidence of membership in professional associations." 8 C.F.R. § 204.5(k)(3)(ii)(E). She also offers evidence of her publishing a book in 2023 and delivering presentations as "[e]vidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations." 8 C.F.R. § 204.5(k)(3)(ii)(F). These materials, however, relate to her activities and accomplishments that occurred after she filed the petition in January 2021. As explained, she must demonstrate eligibility at the time she filed the petition and cannot rely on facts not yet exist at the time of filing to establish her eligibility. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. at 49.

On motion, the Petitioner also discusses her activities before she filed the petition. Those similarly do not show that she has met an additional evidentiary criterion listed under 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). For example, in our previous decision, we discussed her membership in Conselho Regional de Economia do Estado de Pernambuco (CORECON-PE), concluding that it did not satisfy the evidentiary criterion listed under 8 C.F.R. § 204.5(k)(3)(ii)(E). In her motion statement, the Petitioner challenges our finding and lists "a comprehensive breakdown of the membership details" for the

[3] As explained in our previous decision, the Petitioner must initially submit evidence that meets at least three of the six evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F) to show qualification as an individual of exceptional ability in the sciences, arts, or business. If the Petitioner had submitted the requisite initial evidence, we would then conduct a final merits determination to decide whether the evidence in its totality shows that she is recognized as having a degree of expertise significantly above that ordinarily encountered in her field. *See* 8 C.F.R. § 204.5(k)(2).

organization. She, however, has not submitted corroborating evidence confirming the source, veracity, and accuracy of the listed information in her statement.

Additionally, the Petitioner points to reference letters she offers on motion as evidence of "recognition for achievements and significant contributions" in the field of finance. 8 C.F.R. § 204.5(k)(3)(ii)(E). The reference letter from the vice president in investment research at [redacted] discusses her involvement in projects in the firm and provides that she "is an invaluable member of the [redacted] team and will take the firm to a [higher] level." The letter from a manager at [redacted] indicates that she "is a well-versed professional with key skills that made her an integral part of [his] teams" between 2011 and 2014 and "brought a wealth of expertise to a team and helped . . . the organization ma[k]e informed financial decisions." These reference letters, like those we considered in our previous decision, indicate that the Petitioner is a capable and diligent worker. However, none of these letters name an achievement or significant contribution that she has made to the field of finance. Based on these reasons, the Petitioner has not established she was an individual of exceptional ability in the sciences, arts, or business at the time she filed the petition.[4] *See* 8 C.F.R. § 204.5(k)(3)(ii); 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. at 49.

In our previous decision, after dismissing the Petitioner's appeal on the ground that she did not establish eligibility for the EB-2 classification, we dismissed her appeal on an alternative ground that she did not sufficiently document her proposed endeavor in the United States will likely have national importance. *See Matter of Dhanasar*, 26 I&N Dec. at 889. On motion, the Petitioner argues that she intends "to act as a CEO [chief executive officer] and Lead Analyst" for her company, [redacted] "to help businesses in the U.S." She explains in detail the services she intends to provide to customers and clients of [redacted] She claims that with her assistance, her customers and clients will "make extra profit" and "they [will] share some of [the profit] with [their] employees," thus, "increasing then the whole pie of the economy." She further states that her proposed endeavor "holds significant national importance," because it assists small and medium-sized enterprises and that the United States "stands to benefit from [her] expertise in finance." According to the 2024-2029 business plan for [redacted] the Petitioner's company intends to hire 7 employees in year 1 of its operation and a total of 25 employees by year 5 of its operation.

The precedent decision, *Matter of Dhanasar*, 26 I&N Dec. at 889, provides that "[a]n undertaking may have national importance . . . because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." The evidence on motion, including the business plan, does not confirm that the Petitioner's work as a financial analyst will likely impact the field of finance or that its potential prospective impact has national implications within the field. *See id.*, 26 I&N Dec. at 889. For example, she has not established that the proposed endeavor will likely improve or advance the field, such that it will likely have a broad impact in the field. *See id.* Additionally, the potential impact of the proposed endeavor will likely be limited to the Petitioner's company's customers and clients. While she claims that

[4] The Petitioner has not met three of the six initial evidentiary criteria listed under 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F); as such, we need not conduct a final merits analysis to determine whether she has a degree of expertise significantly above that ordinarily encountered in business. *See* 8 C.F.R. § 204.5(k)(2); *Bagamasbad*, 429 U.S. at 25; *Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

impact on her customers and clients will result in impact on the U.S. economy, she has not shown that the level of the purported impact will likely reach the level national importance.

Furthermore, the evidence in the record does not support a finding that the economic effects of the Petitioner's proposed endeavor will likely have national importance. The precedent decision *Matter of Dhanasar*, 26 I&N Dec. at 890, provides that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." In this case, the Petitioner claims on motion that her proposed endeavor will result in the creation of 7 positions in year 1 of [redacted] operation and 25 positions by year 5 of its operation. She, however, has not shown that this level of economic effects, including the possible creation of 25 positions and any other potential economic effects associated with her proposed endeavor, constitute "substantial positive economic effects" discussed in *Matter of Dhanasar*.

We note that merely working in an important field is insufficient to establish the national importance of the Petitioner's specific proposed endeavor. As discussed above, at issue is not the importance of the field in which the Petitioner plans to work; rather, we must focus on "the specific endeavor that [the Petitioner] proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. In this case, for the reasons we have discussed, the Petitioner has not demonstrated that her proposed endeavor will likely reach the level of national importance.[5] Accordingly, we are dismissing her motion to reopen, because the evidence on motion fails to establish that she qualified for the EB-2 classification or the discretionary national interest waiver when she filed the petition in January 2021.

B. 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.

On motion, the Petitioner contests the correctness of our prior decision, claiming that we did not properly consider the evidence in the record. However, she does not specify on motion what evidence we failed to properly consider. Instead, she has offered additional materials, attempting to address the deficiencies we identified in our previous decision. For example, in our previous decision, we observed that she "did not include a diploma or other evidence [showing] that she had completed her [U.S. master's degree]." In response, she submits on motion a copy of her transcript and Master of Business Administration diploma. We noted in our previous decision that the record did "not indicate whether she was employed full-time when she worked for [redacted] and [redacted]." In response, she provides on motion a statement claiming she worked as "an independent consultant [for the two organizations]" and her experience should be "regarded as pertinent full-time employment, given that it is gauged by contractual arrangements with clients." In

[5] The Petitioner has not satisfied the first prong of the *Matter of Dhanasar* framework, and she has not demonstrated eligibility for a national interest waiver. As the identified reasons for dismissal are dispositive of the Petitioner's motion to reopen, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Matter of Dhanasar* framework. *See Bagamasbad*, 429 U.S. at 25; *Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

our previous decision we concluded that she did not show she had commanded a salary, or other remuneration for services, which demonstrates her exceptional ability. In response, she files on motion documents regarding her increased salary and earned bonuses. In our previous decision we explained that the record lacked evidence concerning CORECON-PE's membership requirements. In response, she presents on motion a statement that purportedly lists "a comprehensive breakdown of the membership details" for the organization.

As discussed above, we have considered all additional materials the Petitioner submits on motion and concluded that they are insufficient to establish her eligibility for the EB-2 classification or the discretionary national interest waiver. *See* Section 203(b)(2)(B)(i) of the Act. The Petitioner may disagree with our previous decision, but she has not shown that we erred in our decision. *See* 8 C.F.R. § 103.5(a)(3).

In conclusion, although the Petitioner has submitted additional evidence in support of her motion to reopen, she has not established eligibility for the EB-2 classification or the discretionary national interest waiver. *See* Section 203(b)(2)(B)(i) of the Act. Additionally, on motion to reconsider, she has not demonstrated that our previous decision was based on an incorrect application of law or policy or that our previous decision was incorrect based on evidence in the record at the time we issued the decision. Therefore, the combined motions will be dismissed. *See* 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.