U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31585368

Date: June 28, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a nurse auditor, seeks second preference 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 EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). While neither statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions and states that U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion, grant a petition if the petitioner demonstrates that: 1) the proposed endeavor has both substantial merit and national importance; 2) the individual is well-positioned to advance their proposed endeavor; and, 3) on balance, waiving the job offer requirement would benefit the United States.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualifies for the EB-2 classification but that the record did not establish that a waiver of the job offer requirement is in the national interest. We dismissed a subsequent appeal. Specifically, we adopted and affirmed the Director's decision regarding the first *Dhanasar* prong and dismissed on that basis, reserving our opinion as to the second and third prongs. 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 motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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).

On motion, the Petitioner submits a brief, a statement regarding her work history, and an article regarding employment in Brazil.

Regarding the Petitioner's motion to reopen, the Petitioner does not state new facts, supported by documentary evidence, that establish proper cause to reopen the proceedings. *See* 8 C.F.R. § 103.5(a)(1)(i); (a)(2). The Petitioner states new facts and provides documentary evidence related to her employment history in an attempt to demonstrate her qualification as an advanced degree professional. *See* 8 C.F.R. § 204.5(k)(2). However, these facts do not address the basis for our dismissal of the Petitioner's appeal. While we did discuss the Petitioner's employment history and conclude that the evidence was insufficient to demonstrate the Petitioner's eligibility for the EB-2 classification, our dismissal did not rest on this conclusion. Rather, we adopted and affirmed the Director's decision as to the finding that the Petitioner did not demonstrate the national importance of the proposed endeavor. The Petitioner does not state new facts, supported by documentary evidence, that are material to the national importance of proposed endeavor. Therefore, the new facts do not establish cause to reopen the proceedings.

As to the Petitioner's motion to reconsider, the Petitioner contests the correctness of our prior decision. The Petitioner asserts that our decision did not sufficiently consider the arguments presented on appeal and that it therefore reinforces the Director's alleged errors. The Petitioner repeats claims previously presented on appeal, for example that the Director incorrectly conflated the proposed employment with the proposed endeavor and did not sufficiently consider the evidence in the record. However, we addressed these claims in our prior decision and concluded that they did not establish error in the Director's decision. Although the Petitioner disagrees with the Director's finding that the proposed endeavor lacks national importance, and with our decision to adopt and affirm that finding on appeal, the Petitioner has not demonstrated that our decision was based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3).

The Petitioner also claims that our decision contains a legal error because we considered on appeal whether the letters of recommendation in the record help demonstrate the endeavor's potential prospective impact and thus whether it is nationally important. The Petitioner states that because these letters were submitted in support of the second *Dhanasar* prong, it was a legal error to consider whether they help demonstrate the Petitioner's eligibility under the first prong. In support of this claim, the Petitioner cites to *Love Korean Church v. Chertoff*, 549 F.3d 749 (9th Cir. 2008). However, we are unpersuaded by this claim. The case to which the Petitioner cites does not stand for the proposition that it is a legal error for an adjudicator to consider whether evidence, having been submitted primarily in support of one element of a claim, is also helpful in establishing another. *See id.* at 757-58 (holding that the agency could not impose a requirement that was inconsistent with the controlling regulation).

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the evidence is not material to the basis of our decision to dismiss. On motion to reconsider, 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 Petitioner's contentions in her motion to reconsider merely reargue facts and issues we have already considered in our previous decision. *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 and, therefore, the underlying petition remains denied. The motion 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.