U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30251590

Date: MAR. 1, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a certified nursing assistant, seeks employment-based second preference (EB-2) 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).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner appealed the matter to us. In our decision denying the appeal, we withdraw the Director's determination that the Petitioner qualifies for the EB-2 classification as an advanced degree professional and dismissed the appeal because the Petitioner failed to demonstrate her eligibility for the EB-2 classification and the national interest waiver.

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 motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, "new facts" are facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original application. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." A motion to reconsider must establish that our 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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy the aforementioned requirements and demonstrate eligibility for the requested benefit.

The Petitioner's proposed endeavor is to own and operate her business, which will provide healthcare related online courses focused on medical terminologies. In our decision, while reserving the first and

third prongs, we explained why the Petitioner failed to meet the second prong of the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). We explained how the Petitioner had not demonstrated that she is well positioned to advance her proposed endeavor. In support of her motion to reopen and motion reconsider, the Petitioner submits a letter explaining her strong disagreement with our decision, along with additional documents. The Petitioner also supplies an updated business plan and course descriptions to emphasize the significance of her proposed endeavor as an independent business owner in the field of healthcare. She states that she plans to open an online school to teach medical terminologies to address the linguistic challenges in the medical field. She urges us to reevaluate her documents and to take into account all her submissions.

Nonetheless, the Petitioner's motions do not address our specific determinations and conclusions or establish that they were in error. Instead, the Petitioner reiterates her experience as a certified nursing assistant and medical interpreter. Additionally, she provides more details about her proposed endeavor, outlines the courses she plans to offer, and explains why she believes her online school will expand, eventually evolving into a significant business in the U.S. Although we acknowledge the additional documents provided, the Petitioner has not established new facts relevant to our appellate decision that would warrant reopening of the proceedings, nor has she shown that we erred as a matter of law or USCIS policy.

Neither the Petitioner's letter nor her documents explain how we erroneously denied her appeal and only discuss her proposed endeavor without addressing the specific determinations in our last decision. She also has not demonstrated that our appellate decision was based on an incorrect application of law or USCIS policy and that our decision was incorrect based on the evidence in the record at the time of the decision. In addition, the Petitioner has not offered new evidence or facts on motion to overcome the stated grounds for dismissal in our appellate decision. For the reasons explained above, we will dismiss the Petitioner's motion to reopen and motion to reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.