U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30315781

Date: MAR. 14, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a change management specialist in the field of human resources, 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).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. We dismissed a subsequent appeal, concluding that the record did not establish that the Petitioner's proposed endeavor is of national importance. The matter is now before us on motion to 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.

I. LAW

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.

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the 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. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[1], grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas, such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* at 889.

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge, and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 890-91.

II. ANALYSIS

A review of any motion is narrowed to the basis for the prior adverse decision. Accordingly, we will examine any new facts and arguments to the extent that they pertain to our most recent decision, the dismissal of the appeal. As such, our analysis for this motion is limited to the following: whether we erred in concluding that the record did not establish that the Petitioner's proposed endeavor is of national importance. We incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion. While we may not address each piece of evidence individually, we have reviewed and considered each one.

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

As indicated above, to have established merit for reconsideration of our latest decision, a petitioner must both state the reasons why they believe the most recent decision was based on an incorrect application of law or policy and specifically cite laws, regulations, precedent decisions, or binding policies that the petitioner believes we misapplied in that prior decision. Thus, to prevail in her motion to reconsider, the Petitioner cannot merely disagree with our conclusions but rather must demonstrate how we erred as a matter of law or policy in that immediate prior decision. *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).

On motion, the Petitioner claims that we misapplied "certain legal standards," which resulted in an unfavorable decision for her. The Petitioner further contends that national impact was erroneously analyzed under the framework of other prongs, which resulted in the finding of the business plan being inappropriately undermined. The Petitioner also contends that we unduly focused on economic benefits, which is not a requirement for the approval, and ignored major arguments for national importance. The Petitioner adds that the future entrepreneurship plan was a small aspect of a much broader argument. The Petitioner claims that our ability to disregard analysis of the second and third prongs due to the alleged failure of the first prong's argument prevented the matter from being fully adjudicated and that each prong must be analyzed under the preponderance of the evidence standard.

In support of her prior appeal, the Petitioner mainly argued, among other things, that the Director did not provide analysis on the most important argument raised by the Petitioner by not considering an important piece of evidence, i.e., the business plan of the Petitioner's company called [redacted]. This business plan was submitted in response to a request for evidence (RFE), and the Petitioner indicated in her business plan that her company would provide change management advisory services to small and medium-sized companies in the information technology industry and in the logistics industry. The Director characterized the business plan as a subsequent development or event in the Petitioner's career, which could not retroactively establish her eligibility at the time of filing her petition.[2] However, we found that the Petitioner was planning her business endeavor prior to filing her petition and that the fact that the date of the business plan post-dates the filing date of her petition did not affect her eligibility at the time of filing her petition. Accordingly, we considered the Petitioner's business plan as evidence submitted in support of her proposed endeavor and provided in-depth analysis on the business plan as it pertains to the first prong of the *Dhanasar* framework.

The Petitioner now claims that we unduly focused on the economic benefits provided in the business plan and ignored her other major arguments for national importance. While we may have not addressed each piece of evidence individually in our prior decision, we had reviewed and considered each one. In our prior decision, we stated that the articles submitted in response to the RFE and letters of supports from the Petitioner's former employers demonstrated the Petitioner's accomplished record in her management positions directing various employee relation projects and initiatives. However, we noted that in determining national importance, the relevant question is not the importance of the

[2] *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971) (stating that eligibility must be established at the time of filing); *see also Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998) (holding that a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts).

industry or professions in which the individual will work; instead, we focus on the specific endeavor that the foreign national proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. As such, the Petitioner must demonstrate by a preponderance of the evidence that her proposed endeavor to establish a consultancy company rises to the level of national importance. We had reviewed each evidence on record and considered each argument raised by the Petitioner. We concluded that neither the business plan nor the remaining evidence in the record demonstrated that the Petitioner's proposed endeavor rises to the level of national importance for the reasons stated in our prior decision.

While the Petitioner claims that we misapplied "certain legal standards," the brief in support of the current motion lacks any cogent argument as to how we misapplied the law or policy in dismissing the appeal. Nor does she cite laws, regulations, precedent decisions, or binding policies to support that we misapplied "certain legal standard." Instead, the Petitioner maintains that her petition must be approved because she has documented the importance and ingenuity of her idea, because she has shown her impressive track record of implementing change management at leading U.S. and international companies, because she has hired third-party experts to plan, project, and document the viability of her future endeavor, and because she has documented her important present role at her current employer. While we acknowledge the Petitioner's claims on motion, as we stated in our prior decision, the Petitioner's job experience and past performance and achievements generally relate to the second prong of the *Dhanasar* framework. *See id.* at 890.

The expert opinion letter from [redacted] an associate professor of marketing at [redacted] states that the Petitioner's proposed endeavor in human resources consulting has national importance in the field of business because human resource management, which involves creating work, assessing human resource concepts, recruiting potential employees, providing job training and career advancement, benefits the nation's overall labor market, economy, and business industry. Professor [redacted] also states that human resource management is a very important function in every organization. While the expert opinion letter supports the importance of human resources consulting, the record does not sufficiently demonstrate that the Petitioner's consulting activities offer benefits that extend beyond her clients to impact the information technology industry or the logistics industry more broadly. In *Dhanasar*, we indicated that we look for broader implications of the proposed endeavor and that an undertaking may have national importance, for example, because it has national or even global implications within a particular field. *See id.* at *889*.

In addition, the Petitioner claims that we erred in our prior decision because we did not provide analysis on the second and third prongs of the *Dhanasar* framework. In our prior decision, we declined to discuss the remaining arguments regarding the second and third prongs of the *Dhansar* framework because the Petitioner has not established the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Because the Petitioner's proposed work did not meet the national importance element of the first prong of the *Dhanasar* framework, further analysis of her eligibility under the second and third prongs would serve no meaningful purpose. Furthermore, we are not required to make findings on issues the decision of which is unnecessary to the results we reach. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).

As stated above, a motion to reconsider is not a process by which the party may present essentially the same arguments and seek reconsideration by generally alleging error in the prior decision. *See Matter of O-S-G-,* 24 I&N Dec. at 58. The Petitioner has not shown that our prior decision contains errors of law or policy or that the decision was incorrect based on the record at the time of that decision. *See* 8 C.F.R. § 103.5(a)(3). Therefore, we determine that the instant motion does not meet the requirements of a motion to reconsider.

III. CONCLUSION

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 prior decision. Accordingly, the motion will be dismissed. *See* 8 C.F.R. § 103.5(a)(4). We will not re-adjudicate the petition anew, and the underlying petition remains denied.

ORDER: The motion to reconsider is dismissed.