U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 30251582

Date: MAR. 15, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a marketing director, seeks employment-based second preference (EB-2) classification as an individual of exceptional ability, 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 Texas Service Center denied the petition, concluding that the Petitioner did not qualify for the classification, and 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. We dismissed the appeal because the Petitioner did not demonstrate her eligibility for 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 work as a marketing and advertising specialist and marketing director of her company, [redacted] In dismissing the appeal, we reserved the issue of her eligibility for the underlying EB-2 classification because we agreed with the Director that the Petitioner did not establish her proposed endeavor satisfied the national importance aspect of the first

prong under *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). Specifically, we concluded the Petitioner did not show how her proposed endeavor would have broader implications in the marketing field or that her endeavor would have a wide-reaching impact in the United States. We further noted that the evidence did not demonstrate how her work would broadly enhance societal welfare at a level commensurate with national importance or that her endeavor would offer the regions where her company will operate or its population a substantial economic benefit through employment levels, business activity, or tax revenue. Accordingly, we decided further analysis of her qualification under the second and third prongs outlined in *Dhanasar* would serve no meaningful purpose and reserved those issues.

On motion, the Petitioner argues that we failed to address her eligibility for the EB-2 classification, applied a stricter standard of proof, overlooked probative evidence, and disregarded precedent decisions. In support, the Petitioner references portions of her personal statement, letters of recommendation, business plan, expert opinion letters, and probative research.

A. Motion to Reopen

Initially, we note that motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323, (1992) (citing *INS v. Abudu*, 485 U.S. 94, 108 (1988)); *see also Selimi v. Ashcroft*, 360 F.3d 736, 739 (7th Cir. 2004). There is a strong public interest in bringing proceedings to a close as promptly as is consistent with giving both parties a fair opportunity to develop and present their respective cases. *INS v. Abudu*, 485 at 107.

Based on its discretion, USCIS "has some latitude in deciding when to reopen a case" and "should have the right to be restrictive." *Id.* at 108. Granting motions too freely could permit endless delay when foreign nationals continuously produce new facts to establish eligibility, which could result in needlessly wasting time attending to filing requests. *See generally INS v. Abudu*, 485 U.S. at 108. The new facts must possess such significance that, "if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case." *Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992); *see also Maatougui v. Holder*, 738 F.3d 1230, 1239–40 (10th Cir. 2013). Therefore, a party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu, 485* at 110. With the current motion, the Petitioner has not met that burden.

On motion, the Petitioner contends she is eligible for the EB-2 classification as an individual of exceptional ability. We reserved the issue of the Petitioner's eligibility for the underlying classification because discussing that issue, regardless of outcome, would not have changed the decision's outcome,[1] and that continues to be true. We need not consider that issue unless and until the Petitioner overcomes the initial denial ground by establishing eligibility for the national interest waiver. For the reasons below, we conclude that the Petitioner has not done so.

[1] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 the applicant did not otherwise meet their burden of proof).

In our decision dismissing the appeal, we agreed with the Director that the Petitioner did not meet *Dhanasar's* first prong. We explained that the Petitioner had not demonstrated her proposed endeavor's national importance. On motion, the Petitioner asserts that she submitted documentary evidence to demonstrate that her proposed endeavor of being a marketing and advertising specialist and marketing director of her company has national implications. The Petitioner contends that we erred in not considering her current and prospective position when determining the national importance of her proposed endeavor. In an updated personal statement, the Petitioner explains that she plans to provide media monitoring and media intelligence to small and midsize enterprises and maintains that her endeavor will impact the regional economy and the marketing industry, create more job opportunities, and will have broader implications in the societal welfare. The Petitioner also argues that we dismissed her business plan that clearly outlines her proposed endeavor's benefits to the U.S. economy as well as the services the Petitioner plans to provide to small and midsize enterprises through her business. Additionally, the Petitioner claims that we did not give proper consideration to the expert opinion letter and probative research because we concluded the documents did not sufficiently demonstrate the national importance of the proposed endeavor.

Our appellate decision, however, specifically considered the Petitioner's submission including her personal statement, business plan, and expert opinion letter. After reviewing the documents, we determined that the evidence presented supports the Petitioner's claim that her proposed endeavor is in an area that has substantial merit. We concluded nevertheless that the Petitioner had not shown that her proposed endeavor would have broader implications in the marketing field or benefit the regional or national economy to reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

While we acknowledge the Petitioner's submission, we conclude that the evidence, including the evidence on motion, does not identify the broader implications of her specific proposed endeavor. Accordingly, while the Petitioner has offered new evidence, it does not demonstrate new facts showing that she meets the "national importance" requirement of *Dhanasar's* first prong, and therefore she has not overcome our prior determination. The motion to reopen is therefore dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

B. Motion to Reconsider

As previously stated, 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).

On motion, the Petitioner states that we failed to consider precedent decisions and maintains that analogous to *Dhanasar*, she has submitted probative expert opinion to demonstrate that her proposed endeavor is of national importance. She further contends that she has demonstrated by a preponderance of the evidence that we did not consider the totality of the evidence, applied a stricter standard of proof, and erroneously applied the applicable laws when evaluating the evidence of record.

The Petitioner argues that we "erred in not considering precedent decisions," but she mentions only *Dhanasar*. Our appellate decision specifically considered the Petitioner's eligibility under the first prong of the *Dhanasar* analytical framework. Moreover, we referenced *Dhanasar's* concepts and

applied them to the Petitioner's arguments and evidence. As such, contrary to the Petitioner's assertion, we considered the *Dhanasar* precedent decision in adjudicating the Petitioner's national interest waiver and appeal.

The Petitioner further states, "[a]s in *Matter of Dhanasar*, [the Petitioner] submitted a probative opinion from an expert holding a senior position in academia and industry that describes the importance of her proposed endeavor and, more broadly, the benefits of [the Petitioner's] work via her company, [redacted] for the United States that sustain our economy. In addition, we submitted probative research to support [the Petitioner's] claims." In *Dhanasar*, "[t]he petitioner submitted probative expert letters from individuals holding senior positions in academia, government, and industry that describe the importance of hypersonic propulsion research as it relates to U.S. strategic interests." *Id.* at 892. In addition, the petitioner "provided media articles and other evidence documenting the interest of the House Committee on Armed Services in the development of hypersonic technologies and discussing the potential significance of U.S. advances in this area of research and development." *Id.* In this case, the Petitioner has not demonstrated that the facts of the current petition are similar to those of *Dhanasar*. For example, unlike the scientific researcher in *Dhanasar*, the Petitioner has not demonstrated that her proposed endeavor offers broader implications in the field.

In addition, the Petitioner expresses disagreement with our analysis of her business plan and the expert opinion letters, but she does not explain how our specific conclusions applied a stricter standard of proof. The Petitioner does not also point to specific instances where we required a "stricter standard" or explain how we applied a different standard of proof other than by the preponderance of the evidence. The preponderance of the evidence is the standard of proof governing immigration benefit requests. *Chawathe*, 25 I&N Dec. at 375; *see also Mater of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Here, the Petitioner 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.

Because the Petitioner has not established that we erred as a matter of law or USCIS policy in our decision, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and her underlying petition remains denied.

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.