U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30413845

Date: MAR. 18, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a physical therapist, 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We summarily dismissed the Petitioner's subsequent appeal. The matter is now before us on combined motions to reopen and reconsider. 8 C.F.R. § 103.5.

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.

The Petitioner filed her appeal on April 13, 2023. She checked a box on Form I-290B, Notice of Appeal or Motion, stating, "My brief and/or additional evidence is attached." The evidence submitted with the Form I-290B included a brief, an updated personal statement, and copies of evidence already in the record. We summarily dismissed the appeal, stating, "you do not address the specific findings in the Director's denial, nor does your brief claim any erroneous conclusion of law or statement of fact in the Director's decision."

On motion, the Petitioner states, "in my appeal letter I chose not to point out errors or flaws in the previous decision … My goal is to offer a more complete and comprehensive understanding of my real intention to undertake and promote services of national importance." She submits a brief and copies of evidence already in the record. The Petitioner also submits evidence of three courses completed at the [redacted] Philippines, from December 2022 to March 2023.[1]

[1] The Petitioner does not explain the relevance of this evidence. Nor does the Petitioner explain how she completed this coursework at an institution in the Philippines when USCIS records reflect that the Petitioner has not traveled outside the United States since her entry in 2019.

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 petition. 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). We do not consider new facts or evidence in a motion to reconsider.

In requesting a national interest waiver of the job offer requirement, a petitioner must 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,[2] 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 Director determined that the Petitioner's proposed endeavor has substantial merit. However, he concluded that the Petitioner did not establish that her proposed endeavor has national importance under the first prong of the *Dhanasar* analysis. The Director also concluded that the Petitioner did not establish that she was well-positioned to advance her proposed endeavor; or that, on balance, waiving the job offer requirement would benefit the United States.

The record before us at the time we summarily dismissed the Petitioner's initial appeal did not specifically identify an erroneous conclusion of law or statement of fact in the decision being appealed. Therefore, there was no error in summarily dismissing the appeal.

The Petitioner does not assert that our previous appeal decision was based on an incorrect application of law and/or policy. Nor does the Petitioner identify specific errors or explain how our prior appeal decision did not follow the regulations and policy guidance. Upon review, we do not find any error or incorrect application of law or policy. The Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions and restating her initial claims; the motion must demonstrate how we erred as a matter of law or policy. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). The Petitioner here has not met the requirements of a motion to reconsider.

[2] *See also 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 to be discretionary in nature).

As noted above, on motion the Petitioner submits a brief and references evidence already in the record. We note that the Petitioner, on motion, again does not identify any specific error of law or policy in the Director's decision. The deficiencies in the already submitted evidence have been identified and discussed in the Director's decision. The Petitioner's brief on motion does not overcome those deficiencies and does not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. Therefore, the Petitioner has not stated new facts supported by documentary evidence that warrant reopening our prior decision.

For the reasons discussed above, the Petitioner has not shown proper cause for reopening the proceedings or reconsideration of our prior decision. Therefore, the Petitioner has not established eligibility for the benefit sought.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.