U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30589967

Date: MAR. 25, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a nurse, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed a subsequent appeal. 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.

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. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

- 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.

[1] *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).

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.

The Petitioner proposes to work as a registered nurse, and intends to provide nursing care and administrative services to the elderly and those with special needs and/or mobility impairments by implementing her own unique protocol for elderly care. In our previous decision dismissing the Petitioner's appeal, incorporated here by reference, we concluded that the record did not establish the national importance of her proposed endeavor, as required by the first prong of the *Dhanasar* framework. Because this conclusion was dispositive of the appeal, we reserved our opinion as to the remaining *Dhanasar* prongs.

On motion, the Petitioner does not claim that our prior decision dismissing the appeal was based on an incorrect application of law or policy or that it was incorrect based on the evidence in the record at the time of our decision. Her statement in support of the motion does not point to any factual, legal or policy error in our prior decision. In fact, her statement is fundamentally identical to her appellate brief and contains no reference to our August 31, 2023 decision dismissing her appeal.

While the Petitioner continues to maintain she submitted sufficient evidence to establish eligibility for the requested classification, she cannot meet the requirements of a motion to reconsider by repeating arguments that have already been considered in previous decisions; the motion must demonstrate how we erred as a matter of law or policy in our last 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"). Here, the Petitioner does not identify any specific error of law or policy in our prior decision. Rather, she requests a general reconsideration of her eligibility, which is insufficient to meet the requirements of motion under 8 C.F.R. § 103.5(a)(3). We will not re-adjudicate the petition anew and, therefore, the motion to reconsider will be dismissed.

In sum, 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. As the Petitioner has not met the requirements of a motion to reconsider, we affirm our prior conclusion that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver. We again reserve our opinion regarding whether the record satisfies the second and third *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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 an applicant is otherwise ineligible).

ORDER: The motion to reconsider is dismissed.