U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37487375

Date: MAY 02, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks second preference 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 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 the Petitioner was not eligible for categorization in the employment based second preference permanent immigration (EB-2) category. We dismissed a subsequent appeal wherein we concluded the Petitioner was eligible for categorization in the EB-2 category as an advanced degree professional but the evidence in the record did not support a waiver of the required job offer, and thus of a labor certification, would be in the national interest under the analytical framework we first explicated in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). The matter is now before us on a combined motion 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 combined motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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). 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 these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner submits new facts supported by evidence and also contests the correctness of our prior decision. The Petitioner asserts the matter merits reopening because "her endeavor has been more broadly recognized by both Congress and federal courts as one that is vital to the national interest of the United States." The Petitioner also asserts that her elaboration on her proposed endeavor and its prospective impact provides new facts in light of new USCIS policy guidance. The Petitioner

contends publications from the United States Department of Defense and other sources describe the broader implications of her endeavor. Further, the Petitioner asserts error warranting reconsideration of our previous decision because the Petitioner represents that she has earned a degree categorizable as one in science, technology, engineering, or mathematics (STEM), has an endeavor dissimilar to teaching, and that her endeavor's national importance is supported by the recommendation letters she submitted into the record. We are not persuaded that the Petitioner's matter merits reopening or reconsideration.

The new facts supported by evidence the Petitioner submitted with her motion do not support a change in the outcome of this matter in our last decision. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). The Petitioner cites mainly to the court's dicta discussing United States House of Representative and United States Senate reports contained in *Katcoff v. Marsh*, 775 F.2d 223 (2nd Cir. 1985) and speaking to the importance of a military chaplaincy program to address the spiritual needs of our military service members and the military chaplaincy's relevance and reasonable necessity to Army conduct in furtherance of national defense. But the dispute in *Katcoff* centered on whether a military chaplaincy program violated the establishment clause of the United States Constitution. The new facts the Petitioner identifies described in the court's dicta in *Katcoff* do not delve into whether the potential prospective impact of military chaplaincy had national importance based on its national or even global implications. Nor did the court consider any broader implications emanating from the military's chaplaincy program.

And the Petitioner submitted a declaration to support new facts about the prospective impact of her proposed endeavor to demonstrate its national importance. We note a duality in the Petitioner's assertions about her proposed endeavor. On one hand, the Petitioner maintains she is unable to provide detail and specificity like "other NIW petitioners" about her proposed endeavor because of the nature of military service. We recognize that military service requires the execution of orders from superiors, and it is not possible to control the nature of those orders as an individual member of the armed forces. Nor is deviation from lawful orders tolerable. However, the context the Petitioner provides does not relieve her of the burden to "describe the specific endeavor that [she] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). So, perhaps to address the lack of specificity and detail in her expression of her proposed endeavor which we described as "not clear" in our previous decision, the Petitioner has submitted an elaboration on her proposed activities in a new declaration submitted in support of the combined motion. However, we consider the Petitioner's expressions of her proposed endeavor with a suggestion of uncertainty because the Petitioner has gone to great pains to repeatedly state that she is unable to provide detail and specificity about her endeavor like "other NIW petitioners."

Notwithstanding the confusing duality of the Petitioner's assertions described above, the Petitioner's elaboration further underscores our previous conclusion that the Petitioner's endeavor has a narrow focus that ultimately influences only those that avail themselves of her work. Or in other words, assuming the Petitioner is ordered by her superiors to serve in a military occupational specialty in line with her proposed endeavor, it is not adequately clear how the "new strategies and…new techniques to reduce the suicide rate amongst servicemembers" or "counter domestic extremism and religious radicalism in the U.S. military" would exert national, or even global, impact to the field or have broader implications influencing the suicide rate in a manner rising to a level of national importance.

For example, the Petitioner "intends to address" the "worsening suicide crisis amongst U.S. military service members…by implementing a program consisting of a series of trainings and workshops…" based on the Petitioner's prior work with [redacted] The Petitioner's statement is not sufficiently material, relevant, or probative evidence to reopen this matter because it does not demonstrate any impact or implications of the workshops and training programs beyond the individuals availing themselves of the service. As we said in our previous decision, the curtailed sphere of influence of the proposed military chaplainship endeavor here is akin to the curtailed sphere of influence observed in the teaching aspects of the Petitioner's endeavor in *Dhanasar*. Moreover, the Petitioner concedes that United States Department of Defense already has a program to address the potentiality for suicide and self-harm by service members. And the Petitioner further highlights the limited universe of her work when she notes that her work will likely "*individually* halt extremism and radicalism" (emphasis added).

And the Petitioner renews her contention that her endeavor will address a shortage of female military chaplains. We recognize the United States Department of Defense maintains an all-volunteer force and does not traditionally file labor certifications.[1] However, the infeasibility of a labor certification is a consideration under *Dhanasar's* third prong. The Petitioner new facts and evidence do not demonstrate how the addition of one female military chaplain will address the shortage she describes in a way that is nationally important either due to national, or even global, impact or broader implications stemming from the activities of a single female military chaplain following the orders of military superiors, assuming those orders permit her to carry out the endeavor she described.

Moreover, the Petitioner's assertions of error do not merit reconsideration of our previous decision because she does not 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). Firstly, the record does not reflect the Petitioner has earned a degree in a STEM field. We concluded in our prior decision that the Petitioner earned the single source equivalent of a PhD in political science. On motion, the Petitioner states that she has earned a master's degree in military science from [redacted] in Austria. But the copy of the Petitioner's degree certificate with translation present in the record demonstrates the Petitioner's degree from [redacted] is a master's in military leadership, not military science. The record does not contain sufficient evidence to demonstrate the Petitioner's master's degree in military leadership from [redacted] is the single source equivalent of a U.S. degree in military science, which is a STEM discipline. But, even if the Petitioner's master's degree was the single source equivalent of a U.S. master's degree in military science, it still would not comprise adequate evidence to demonstrate the national importance of her proposed endeavor because the degree certificate does not sufficiently demonstrate on its face that a degree in military science is sufficiently connected to an endeavor of military chaplaincy. And the letters of military experts also do not support reopening or reconsidering the proceedings here. Whilst the Petitioner emphasizes the background and expertise of the individual letter writers, the content of the letters themselves speak about the Petitioner's attributes and not the attributes of the proposed endeavor. Or in other words, the authors do not discuss the national, or even global, impact of the Petitioner's proposed endeavor

[1] The Department of Defense has in the past and currently participated in programs designed to recruit non-citizens without lawful permanent resident status to the armed forces, notably through the indefinitely closed whilst under review Military Accessions Vital to the National Interest (MAVNI) program and the Department of Defense's J-1 Visa Waiver Program – Basic Research administered by the Office of the Under Secretary of Defense for Research & Engineering.

or any broader implications emitted that impact matters on a level commensurate with national importance. The letters do not establish the eligibility of the proposed endeavor as one of national importance as required by the first prong of the *Dhanasar* analytical framework.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. And on motion to reconsider, 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. Therefore, the combined motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.