U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37415079

Date: MAY 6, 2025

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 Texas Service Center denied the petition, concluding the Petitioner had not established eligibility for a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the Petitioner's subsequent appeal and motion to reconsider. The matter is now before us on a second motion to 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 motion.

A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy; and establish that the decision was incorrect based on the evidence in the record 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.

In dismissing the prior motion to reconsider, we determined the Petitioner did not establish that we misapplied the law or U.S. Citizenship and Immigration Services (USCIS) policy. Citing *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006), we explained that the Petitioner essentially reargued claims of eligibility for a national interest waiver without pointing to how we erred in our previous decision as a matter of law or policy. We noted that the Petitioner must specify laws, regulations, precedent decisions, or binding policies believed to be misapplied in the prior decision.

In the Petitioner's current motion brief, she contends she did not merely disagree with our conclusions without demonstrating a misapplication of law or policy. She asserts she "provided a detailed explanation of why the decision was legally incorrect based on the record at the time of adjudication." She also asserts she was not "merely re-stating that she meets the evidentiary criteria," but that "she

was emphasizing how the agency's legal analysis deviated from the required standard by failing to afford proper weight to credible and relevant documentation." She also states she referenced precedent decisions in her prior motion. Moreover, she claims we "overlooked, minimized, or otherwise dismissed her documentary evidence of national importance, including her proposed project's alignment with critical national health objectives and shortage data that underscore the significance of her work in physical therapy," as well as her background and accomplishments.

About her endeavor's "alignment with critical national health objectives," as noted in the appeal dismissal, merely working in an important field or profession is insufficient to establish the national importance of the proposed endeavor. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). Moreover, the national shortage of physical therapists is not, in and of itself, sufficient to establish the national importance of the Petitioner's endeavor.[1] Further, the Department of Labor directly addresses U.S. worker shortages through the labor certification process. Furthermore, the Petitioner's knowledge, skills and abilities relate to the second prong of the *Dhanasar* framework and thus "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890

Here, we are not persuaded by the Petitioner's arguments. We agree with our prior decision that the Petitioner did not meet the requirements of a motion to reconsider. While we acknowledge the Petitioner's statements that she was not "merely re-stating" or "re-arguing the facts," but "emphasizing how the agency's legal analysis deviated from the required standard by failing to afford proper weight to credible and relevant documentation," she did not explain why we should find the evidence any more persuasive than before. Moreover, we note the Petitioner did not provide any precedent decisions in her prior motion as stated.

Therefore, the Petitioner has not established that our prior decision was based on an incorrect application of law or policy. *See* 8 C.F.R. § 103.5(a)(3). We have already considered and analyzed the Petitioner's evidence in the petition under the preponderance of the evidence standard and found it insufficient to demonstrate eligibility for the requested benefit. Our prior motion decision appropriately explained that the Petitioner's prior arguments did not specify the reasons why the preceding decision was based on incorrect application of law or policy. Disagreeing with our conclusions does not establish that the decision was based on an incorrect application of law or policy and establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3).

In this matter, the Petitioner has not overcome our prior decision or shown proper cause to reconsider this matter. 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, nor has she demonstrated eligibility for the requested benefit. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

[1] 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5. *See also* USCIS Policy Alert, P A-2025-03, National Interest Waivers for Advanced Degree Professionals or Persons of Exceptional Ability (Jan. 15, 2025), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250115-Employment-BasedNationalInterestWaivers.pdf.

ORDER: The motion to reconsider is dismissed.