U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31134798

Date: MAY 15, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a nursing management specialist, seeks employment-based second preference (EB-2) 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 that the Petitioner had not established that she qualified for the EB-2 classification as a member of the professions holding an advanced degree, and 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. In our decision dismissing the appeal, we acknowledged that the Petitioner had established her qualifications for the EB-2 classification as an advanced degree professional, but nonetheless dismissed the appeal because the record did not demonstrate that the Petitioner met the first prong of the analytical framework described in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

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 record shows that the Petitioner's proposed endeavor is to continue working as a nursing management specialist through her company, [redacted] She seeks to assist healthcare organizations, providers, clinics, and hospitals in implementing healthcare procedures.

In our decision, while we concluded that the Petitioner met the underlying EB-2 classification, we noted why the Petitioner failed to meet the *Dhanasar* analytical framework's first prong. We explained the Petitioner had not shown that her proposed endeavor sufficiently extends beyond her healthcare company to impact the healthcare field or the economy at a level commensurate with national importance. In addition, we stated that the Petitioner had not demonstrated that her revenue projections and potential business activity, even if realistic, would provide a significant economic benefit to the United States or any economically depressed regions such that it would rise to the level of national importance.

On motion, the Petitioner asserts that we overlooked the documents she submitted in support of her appeal, including the business plan, expert opinion letters, and industry articles. The Petitioner highlights the evidence she submitted in response to the Director's request for evidence and in support of the appeal in an attempt to underscore their sufficiency and argues that she provided ample evidence to demonstrate the national importance of her proposed endeavor. The Petitioner also argues that the expert opinion letters demonstrate her proposed endeavor's significant positive impact on the U.S. economy. In an updated statement, the Petitioner emphasizes her qualifications and experience and claims that her proposed endeavor of providing nurse management specialist services through her company holds significant national implications for the healthcare industry and the economy. The Petitioner also claims her industry articles affirm her proposed endeavor's national importance for both the healthcare field and the economy.

Our appellate decision, however, specifically considered the Petitioner's proposed endeavor as outlined in her statement and business plan. We determined the Petitioner had not sufficiently demonstrated that her specific endeavor would have national implications for the healthcare field or lead to national advances in the healthcare field. Our focus in considering national importance is not on the industry itself; instead, we focus on "the specific endeavor that the foreign national proposed to undertake." *Dhanasar*, 26 I&N Dec. at 889. In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Id.* In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects." *Id.* at 890. As noted by the Director, and affirmed in our prior decision, the record does not show that her specific proposed endeavor's impact stands to sufficiently extend beyond her own company and its clientele to impact her field or industry, the U.S. economy, or societal welfare at a level commensurate with national importance.

Regardless, the Petitioner has not submitted any evidence or arguments that could be construed as "new facts" that were previously unavailable or undiscoverable. The Petitioner's motion to reopen must therefore be dismissed.

The Petitioner contends that we "dismissed objective and corroborative evidence supporting [the Petitioner's] proposed endeavor." She also maintains that we used a "stricter than required standard

when evaluating the national importance" her proposed endeavor. Except where a different standard is specified by law, a petitioner must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Chawathe*, 25 I&N Dec. at 375-76. Under the preponderance of the evidence standard, the evidence must demonstrate that a petitioner's claim is "probably true." *Id.* at 376. Here, the Petitioner states that her record demonstrates her proposed endeavor's national importance and requests that we "evaluate whether the record includes sufficient detail regarding" her endeavor, but the Petitioner does not explain how our specific conclusions applied a stricter standard of proof.

Furthermore, the Petitioner argues that we "erred in not considering precedent decisions," but she mentions only *Dhanasar*.[1] She states: "As in *Matter of Dhanasar*, [the Petitioner] submitted opinions from two (2) independent experts holding senior positions in academia and industry that describe the importance of her proposed endeavor and, more broadly, the benefits of [the Petitioner's] work for the United States. In addition, we submitted probative research and a Business Plan 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.* Here, the Petitioner has not established that the facts of the instant petition are analogous to those in the *Dhanasar* precedent decision. For example, unlike the scientific researcher in *Dhanasar*, the Petitioner has not demonstrated that her proposed endeavor offers broader implications in her field.

The Petitioner has not established 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. The motion to reconsider must therefore be dismissed.

The Petitioner has not established facts relevant to our appellate decision that would warrant reopening of the proceedings, nor has she shown that we erred as a matter of law or USCIS policy. Consequently, we have no basis for reopening or reconsidering our prior decision. Accordingly, the motions 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.

[1] Our appellate decision specifically considered the Petitioner's eligibility under the *Dhanasar* analytical framework's first prong.