U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34613501

Date: NOV. 04, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an education administrator, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, and a national interest waiver of the job offer requirement attached to this classification. See section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Workers (national interest waiver), concluding the Petitioner had not established a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the appeal and subsequent combined motions to reopen and to reconsider. The matter is now before us for a second time as combined motions to reopen and to reconsider. 8 C.F.R. § 103.5(a)(2)-(3).

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.

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). 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. See Matter of Coelho, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

The Director determined that the Petitioner had established the substantial merit of her proposed endeavor but had not established its national importance under the first prong of the analytical framework for adjudicating national interest waivers under Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016). On appeal, we similarly concluded the Petitioner had not demonstrated the national importance of her endeavor and thereby had not established her eligibility for a national interest waiver. We therefore did not analyze the other two prongs of Dhanasar as it would serve no meaningful purpose.

In our subsequent decision dismissing the combined motions to reopen and to reconsider, we concluded the Petitioner did not identify any specific misapplication of law or policy in the appeal decision to warrant reconsideration. We further concluded that: the additional evidence submitted with the motion to reopen did not state new facts as they relate to our prior decision; the evidence submitted largely repeated what was already included in the record; and the new professional plan and recommendation letter did not show her potential endeavor will have broader implications at a level of national importance, or that the endeavor would impact the field or the U.S. economy more broadly at a level commensurate with national importance.

In the instant combined motions, the Petitioner asserts errors in the Director's decision, and that we ignored her arguments raised on appeal. However, she does not specify what arguments she believes were ignored. Moreover, our review on this combined motion is limited to reviewing our latest decision, which in this case was our decision on the Petitioner's first combined motions. 8 C.F.R. § 103.5(a)(1)(ii).

The Petitioner re-submits the evidence provided with the prior combined motions: an updated professional plan, an evaluation of her education and experience, and an expert opinion letter. She asserts our prior decision did not assess her achievements. However, the Petitioner's achievements are relevant to the second prong of the Dhanasar framework, which relates to whether an individual is well-positioned to advance the proposed endeavor and therefore "shifts the focus from the proposed endeavor to the foreign national." Matter of Dhanasar, 26 I&N Dec. at 890. Our prior decision analyzed the first Dhanasar prong, pertaining to the substantial merit and national importance of a proposed endeavor, which focuses on the specific endeavor that the foreign national proposes to undertake and its prospective impact. Id. at 889. The Petitioner therefore has not established that we erred in not weighing her achievements in our prior decision assessing the national importance of her proposed endeavor.

In Dhanasar, we 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 at 889. We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." Id. at 890. The Petitioner asserts that our prior decision did not weigh the projected impact of her work and erred by stating the evidence presented largely repeats what was already included in the record. Specifically, she asserts we did not consider that her work would enhance social well-being, impact the community, and contribute to job creation. However, the Petitioner does not identify what new facts presented in her evidence were not considered in our prior decision and establishes her proposed endeavor would enhance social welfare, impact the community, or contribute to job creation at a level of national importance. As stated in our prior decision, the Petitioner's evidence did not state new facts and arguments relating to the evidence addressed in our appeal decision. For example, her updated proposed plan discusses the importance of the industry or profession in which the Petitioner will work, which we previously noted is not determinative of the national importance of the Petitioner's proposed endeavor. Id. at 889. The updated proposed plan, similar to her original proposed plan, does not demonstrate any broader implications of the Petitioner's proposed endeavor within the field commensurate with national importance for the reasons discussed

in our appeal decision. Further, neither plan evidences how the Petitioner's proposed endeavor would have significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. Without such evidence, the record does not demonstrate the benefits to the U.S. regional or national economy resulting from her services or position would reach the level of "substantial positive economic effects," particularly in an economically depressed area, as contemplated by Dhanasar. Id. at 890

The Petitioner therefore has not asserted or established new facts relevant to our prior decision that would warrant reopening of the proceedings. 8 C.F.R. § 103.5(a)(2). Additionally, the Petitioner has not demonstrated we erred as a matter of law or policy in our prior decision or that the decision was incorrect based on the evidence in the record of proceedings at the time. Accordingly, she has not satisfied the requirements for a motion to reconsider. See 8 C.F.R. § 103.5(a)(3).

Consequently, we have no basis for reopening or reconsideration of our decision, and the combined motions 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.