U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34250376

Date: NOV. 15, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a financial manager and entrepreneur, 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 that the Petitioner did not establish they qualify for the EB-2 classification, nor did they establish they qualify for the national interest waiver. 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.

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.

On motion, the Petitioner contests the correctness of our prior decision, asserting that we erroneously disregarded the preponderance of the evidence standard. For example, the Petitioner states that we did not provide an analysis of the EB-2 classification and then further states, our decision was incorrect based on the evidence in the record of proceedings at the time of the decision. In our appellate decision we reserved the issue of the Petitioner's EB-2 classification as the Petitioner is not otherwise eligible for a national interest waiver. Specifically, we stated, "[w]here a case warrants a dismissal regardless of other eligibility considerations, it is unnecessary that we address those other considerations." *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 the applicant did not otherwise meet their burden of proof). Here, the Petitioner does not establish that

reserving this issue was an incorrect application of any specific law or policy, other than to say it was incorrect. Therefore, this does not meet the requirement of a motion to reconsider.

The Petitioner further asserts, "there are multiple errors in the procedure and facts that went into the RFE of the petition and the Decision. Respectfully, there was an incorrect application of law or policy, and that the decision was incorrect based on the evidence of the record." However, our review on motion is limited to reviewing our latest decision, and therefore we will only address the assertions related to our appellate decision. 8 C.F.R. § 103.5(a)(1)(ii). The Petitioner quotes our appellate decision which states, "the record did not establish the national importance of the Petitioner's endeavor because its prospective impact would not sufficiently extend beyond her prospective clients to impact the industry or field more broadly." The Petitioner states, "USCIS derogatorily and erroneously equates the lack of geographical implication and the lack of potential to employ U.S. workers as failure to show national importance."

Our appellate decision directly addresses the geographical implication issue by stating, "[h]owever, while it is true that *Dhanasar's* analytical framework 'seek[s] to avoid overemphasis on the geographical breadth of an endeavor,' a petitioner should still establish the 'broader implications' attributable to their proposed endeavor rise to the level of national importance." Our appellate decision correctly states that while we do not emphasize the geographical breadth of an endeavor, *Dhanasar* does emphasize a broader impact; such as, national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances. *Dhanasar*, 26 I&N Dec. at 889. Or that, an 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. Although we agree there is no geographical requirement to the *Dhanasar* framework, there is a requirement of a broader prospective impact such that in *Dhanasar*, we determined that the Petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

On motion, the Petitioner primarily asserts that our appellate decision was incorrect but does not explain how we incorrectly applied law or policy. For example, the Petitioner highlights that their proposed endeavor will help minimize "corruption in the expenditure of a company's money." However, we specifically noted in our appellate decision, "[w]hile the Petitioner asserts that her work and techniques will 'minimize the occurrence of corruption,' she has not shown how her company's service would meaningfully address corruption, impact society more broadly, or result in substantial economic effects as contemplated in *Dhanasar*." On motion, the Petitioner does not assert an incorrect application of law or policy but presents arguments that have already been addressed. Therefore, this does not meet the requirement of a motion to reconsider.

The Petitioner asserts that their proposed endeavor will have national implications in the financial industry by generating direct and indirect jobs and stimulating the investment of foreign companies on American soil. The Petitioner's business plan and prospective economic impact were evaluated in our appellate decision where we state "the business plan does not provide sufficient explanation for the basis of these projections. And, even if the endeavor's revenue and job creation projections were sufficiently explained, they do not establish that her company would operate on a scale rising to the level of national importance." The Petitioner does not state any specific incorrect application of law

or policy in relation to our analysis of the business plan; but states they disagree with our analysis. This does not meet the criteria for a motion to reconsider. The record establishes that the business plan was fully reviewed and evaluated based on the *Dhanasar* framework.

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 motion will be dismissed. 8 C.F.R. § 103.5(a)(4). The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). The Petitioner's contentions in their current motion merely reargue facts and issues we have already considered in our previous 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"). We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reconsider is dismissed.