U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35139602

Date: NOV. 26, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an accountant, 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 that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the Petitioner's appeal on the same basis. The matter is now before us again 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 motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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).

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 (the dismissal of the appeal). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

In our appellate decision, we agreed with the Director that the Petitioner did not meet the first prong of the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). We explained that, although the Petitioner's endeavor of operating a tax consulting services company is substantially meritorious, the record did not establish the endeavor is nationally important under the

first prong of the *Dhanasar* framework. *Id.* We acknowledged the Petitioner's assertions in her business plan, including both her financial and employment projections and concluded that the Petitioner did not demonstrate her endeavor would provide substantial economic benefits as contemplated in *Dhanasar*. We also addressed the Petitioner's contentions on appeal, and explained that she did not establish her endeavor would result in broader implications at a level commensurate with national importance, beyond the immediate benefits to her prospective clients. Accordingly, because the Petitioner did not meet the first prong of the *Dhanasar* analytical framework, we concluded that she was not eligible for a national interest waiver, and reserved her appellate arguments regarding the remaining *Dhanasar* prongs. [1]

On motion to reopen, the Petitioner states that she has identified new evidence that directly supports the claims made in her petition, and establishes her eligibility for the requested national interest waiver. Specifically, the Petitioner submits a statement outlining her intention to create an application, [redacted] designed to simplify tax compliance for a variety of users, including entrepreneurs and small business owners, individual taxpayers, foreign investors, government agencies, and educational institutions and researchers. The Petitioner asserts that the application will result in increased compliance and efficiency, enhanced user experiences for taxpayers, broader impact on public administration, and increased foreign investment. The Petitioner also provides evidence of her registration with the IRS as a certifying acceptance agent, as well as images showing the application's user interface.

Although we have considered the merits of the Petitioner's contentions on motion, we note that, in general, material changes made after the filing of a petition need not be considered. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). In *Matter of Izummi*, the petitioner submitted numerous revisions to a partnership agreement following the director's denial, some of which were intended to "render the instant petition approvable." *Id.* at 175. Accordingly, we determined that those amendments would not be considered in adjudicating the petition, because "a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements." *Id.* at 375-76. Similarly, we conclude that the Petitioner's assertions on motion regarding her intent to develop [redacted] amount to an attempt to correct a deficient petition after filing. The Petitioner did not previously indicate her intention to develop an application to market to her customers or the industry, nor does her business plan indicate the company intended to develop an application.[2] Therefore, we "cannot consider facts that come into being only subsequent to the filing of a petition." *Id.*

Nonetheless, we note that, even if we did consider the Petitioner's evidence relating to the proposed application, the new evidence does not overcome the basis for our dismissal of the appeal. In particular, the Petitioner has not explained, for instance, how their [redacted] is an improvement to other applications widely available in the market to allow us to determine whether it is indeed analogous to "improved manufacturing processes or medical advances" contemplated in *Dhanasar*. And the Petitioner has not explained how this application, even if used by her customers, would result

[1] *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 an applicant is otherwise ineligible).

[2] For example, neither the employment projections nor the operation costs projections in the business plan reflect an intent to engage in software development.

in broader implications at a level commensurate with national importance, beyond the immediate benefits to its users. As such, the evidence does not overcome our conclusion that the Petitioner has not established the national importance of her proposed endeavor.

On motion to reconsider, the Petitioner generally asserts again that the evidence in the record before the Director was not properly considered, without addressing the conclusions made in our appellate decision. And the Petitioner asserts that "the initial decision may have overlooked or underappreciated the depth and scope of my contributions and their alignment with national interest." Notably, however, the Petitioner has not identified an erroneous conclusion of law or fact in our appellate decision, the decision that is the subject of this motion. Our prior decision properly analyzed the Petitioner's assertions regarding her proposed business and services, and considered the evidence in the record. The Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; the motion must demonstrate how we erred as a matter of law or policy. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party seeks reconsideration by generally alleging error in the prior decision). Consequently, we have no basis for reconsideration of our decision.

For the reasons discussed, we conclude that the Petitioner has not established new 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 policy. Accordingly, 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.