U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34619925

Date: OCT. 8, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a nutritionist, 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 demonstrate her eligibility for the requested national interest waiver. We dismissed a subsequent appeal. The matter is now before us on a combined motion to reopen and 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 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).

We incorporate by reference our prior analysis in the appeal decision. By way of summation, the Petitioner proposes to found a startup nutrition consulting services company based in [redacted], Florida, employing 17 individuals within the first five years of operations. We concluded that the record does not establish the proposed endeavor will have national importance, as required by the first prong of the framework for adjudicating national interest waiver petitions outlined in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). More specifically, we explained that the record does not corroborate the Petitioner's assertions that the proposed endeavor would generally create financial bridges and prompt economic development. We also noted that a shortage of workers or skills does not categorically make a proposed endeavor nationally important. We further concluded that the record does not establish the proposed endeavor will have "sufficiently broad implications for the field to demonstrate its national importance."

We reserved the issues of whether the record satisfies the second and third *Dhanasar* prongs because they would be unnecessary to the ultimate decision. *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). We also withdrew the Director's conclusion that the record establishes the Petitioner qualifies as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Act.

On motion to reopen, the Petitioner submits three media publications, published by Globe Newswire, Public School Review, and the University of San Francisco, respectively, providing generalized information regarding nutrition. However, none of the media publications the Petitioner submits as supporting documentary evidence on motion to reopen address the Petitioner, the specific endeavor she proposes to undertake, and how the proposed endeavor may have national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, significant potential to employ U.S. workers, or other substantial positive economic effects. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. Because the media publications the Petitioner submits on motion to reopen do not address the Petitioner and how the proposed endeavor may have national importance, they are immaterial to the first *Dhanasar* prong. The Petitioner does not otherwise provide documentary evidence to support a new fact asserted on motion to reopen. Therefore, we will dismiss the motion to reopen. 8 C.F.R. § 103.5(a)(2), (4).

Next, 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 to reconsider, the Petitioner submits, in essence, the same brief she submitted on appeal, containing many passages—including entire paragraphs—of verbatim text, generally alleging error in our prior decision. A motion to reconsider is not a process by which a petitioner may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). More specifically, the Petitioner generally reasserts on motion to reconsider that both our prior decision and the Director's underlying decision improperly "equate[d] the lack of geographical implication and the potential to employ U.S. workers as failure to show national importance," contrary to *Matter of Dhanasar*. The Petitioner also reiterates generalized assertions already in the record, such as that the proposed endeavor "creates financial bridges, and prompts economic development enhancing and improving the functionality and monetary output of the nation's economy." More specifically, the Petitioner asserts on motion to reconsider that we "violat[ed] regulation and expressed, binding [U.S. Citizenship and Immigration Services (USCIS)] policy. (*see* 8 C.F.R. § 103.2(b)(8)(iv); related USCIS Policy Memo PM-602-0085 (June 3, 2015). Section B)."

We first note that, contrary to the Petitioner's reassertions on motion to reconsider, we did not limit our analysis to the proposed endeavor's geographical implications. Rather, as noted above, we explained that the record does not establish how the proposed endeavor may have the type of broader implications contemplated by the first *Dhanasar* prong, such as "sufficiently broad implications for

the field [of nutrition] to demonstrate its national importance" and significant potential to employ U.S. workers. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. We further addressed that the record does not substantiate the Petitioner's generalized and uncorroborated assertions about the proposed endeavor's potential economic effects, which she repeats on motion to reconsider. Rather than elaborating on how the specific endeavor the Petitioner proposes to undertake may have national or even global implications within the field of nutrition consulting, or any other field, the Petitioner's generalized assertions indicate that the endeavor would be similar to other, typical nutrition consulting services. *See id.*

We next note that the federal regulation the Petitioner asserts on motion to reconsider that we misapplied has no relevance to our underlying decision. The federal regulation the Petitioner addresses on motion to reconsider describes the process for requesting evidence or notifying a petitioner of intent to deny, including the maximum response period for such notices. 8 C.F.R. § 103.2(b)(8)(iv). That federal regulation is separate from the regulation addressing administrative appeals, and decisions thereupon, 8 C.F.R. § 103.3. Because we did not—nor were we required to—send the Petitioner a notice contemplated at 8 C.F.R. § 103.2(b)(8)(iv), its requirements are inapplicable to our decision to dismiss the appeal.

In turn, the Petitioner provides a citation for a USCIS policy memorandum she describes as "USCIS Policy Memo PM-602-0085 (June 3, 2015). Section B." The Petitioner appears to reference a former 2013—not 2015—policy memorandum addressing the role of requests for evidence and notices of intent to deny benefit requests. *See* USCIS Policy Memorandum, *Requests for Evidence and Notices of Intent to Deny*, PM-602-0085 (June 3, 2013), http://www.uscis.gov/legal-resources/policy-memoranda. However, USCIS rescinded PM-602-0085 in 2018. *See* USCIS Policy Memorandum, *Issuance of Certain RFEs and NOIDs; Revisions to* Adjudicator's Field Manual (AFM) *Chapter 10.5(a), Chapter 10.5(b)*, PM-602-0163 (July 13, 2018), http://www.uscis.gov/legal-resources/policy-memoranda. Moreover, because we did not—nor were we required to—send the Petitioner a notice contemplated at 8 C.F.R. § 103.2(b)(8)(iv), PM-602-0085 would not apply to our decision dismissing the appeal, even if USCIS had not rescinded it in 2018.

Because 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, the motion to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(3)-(4).

Because the combined motion to reopen and motion to reconsider does not overcome the issue of whether the proposed endeavor has national importance, as required by the first *Dhanasar* prong, which is dispositive, we reserve the issues of whether the record satisfies the second and third *Dhanasar* prongs, and whether the Petitioner qualifies as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Act; *Bagamasbad*, 429 U.S. at 25; *Matter of L-A-C-*, 26 I&N Dec. at 526 n.7; *Matter of Dhanasar* 26 I&N Dec. at 889-90.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.