U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34610558

Date: OCT. 10, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a legal consultant, 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 combined 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 legal services consulting company based in [redacted] Florida, employing 13 individuals—including herself—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 observed that the record does not establish how the Petitioner's proposed endeavor may "have the broader implications for the consulting services industry, U.S. economy, and international trade as she claims, beyond her business and potential clientele." We also noted that neither the business plan the Petitioner submitted nor the remainder of the record "include[s] any evidence-based justifications for the staffing projections and need to employ additional employees, and thus does not demonstrate a significant potential to employ workers." Relatedly, "the record lacks corroborating evidence that would objectively substantiate

[financial] projections, such as underlying independent basis for the firm's claimed net worth and the source of the claimed sales and revenue." Based on those issues, we concluded that the record does not establish the proposed endeavor will have 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. *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). We also agreed with the Director's conclusion that the record does not establish 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 various publications, published by Trading Economics, CASTUS Global, Euronews, White & Case, Global Expansion, and the Indiana University Maurer School of Law, providing generalized information regarding legals services and business. The Petitioner also submits a publication from the U.S. Department of Commerce providing generalized information regarding the Brazilian market; information from the Brazilian Bar Association—both in general and particular to [redacted] providing generalized information regarding the legal profession in Brazil; and information regarding Brazilian academics from American Association of Collegiate Registrars and Admissions.

None of the media and publications and other information the Petitioner submits as supporting documentary evidence on motion to reopen address the Petitioner, the specific endeavor she proposes to undertake, and how the specific endeavor she proposes to undertake 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. Therefore, the media publications and other information the Petitioner submits on motion to reopen are immaterial to the issue of whether the specific endeavor the Petitioner proposes to undertake may have national importance, as required by the first *Dhanasar* prong. The Petitioner does not otherwise provide documentary evidence to support a new fact asserted on motion to reopen material to the issue of whether the proposed endeavor may have national importance, which is dispositive. 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 lack of 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 "will increase U.S. economy [and] assist in the development and implementation of customized plans to maximize long-term results and enable goal achievement." 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 Petitioner's proposed endeavor may "have the broader implications for the consulting services industry, U.S. economy, and international trade as she claims, beyond her business and potential clientele," as contemplated by the first *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. We also observed that the record does not contain "evidence-based justifications for the staffing projections and need to employ additional employees, and thus does not demonstrate a significant potential to employ workers." *See id.* 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 legal services consulting, or any other field, the Petitioner's generalized assertions indicate that the endeavor would be similar to other, typical legal services consulting businesses. *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. Because USCIS rescinded PM-602-0085 in 2018, before the Petitioner filed the underlying Form I-140, Immigrant Petition for Alien Workers, the Petitioner's references to it on motion to reconsider have no bearing on this matter.

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.