U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33398719

Date: OCT. 28, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a management and financial analyst, 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 Nebraska Service Center denied the petition, concluding that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Director dismissed two subsequently filed combined motions to reopen and reconsider. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

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). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

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).

II. ANALYSIS

The Petitioner claims to have expertise in management and finance and intends to work as a management and financial analyst in the United States. In denying the petition, the Director determined that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner filed a combined motion to reopen and motion to reconsider which the Director dismissed, determining that the Petitioner's submissions did not meet the motion requirements. The Petitioner filed a subsequent combined motion to reopen and motion to reconsider, which the Director also dismissed for not meeting the motion requirements. The matter is now before us on appeal.

Where, as here, an appeal is filed in response to a director's unfavorable action on a motion, the scope of the appeal is limited to the Director's decision on that motion. The regulatory provision at 8 C.F.R. § 103.3(a)(2)(i) states: "The affected party must submit the complete appeal including any supporting brief as indicated in the applicable form instructions *within 30 days after service of the decision.*" (Emphasis added). Thus, if the Petitioner wished to appeal the Director's decision to deny the petition, she should have elected to file that appeal within 30 days of the Director's denial decision. Here, though, the Petitioner elected to file combined motions instead, thus limiting the scope of the appeal to the merits of the Director's decision to dismiss the motions.

The only issue correctly before us on appeal is whether the immediate prior decision – that is, the Director's decision dated March 14, 2024 dismissing the Petitioner's second motion to reopen and motion to reconsider – was correctly decided. Our review and analysis in this matter, therefore, will focus on that determination. Upon review, we concur with the Director's decision dismissing the motions.

A. Motion to Reopen

In dismissing the Petitioner's motion to reopen, the Director determined that the Petitioner did not submit new facts that were supported by affidavits and/or documentary evidence demonstrating

in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

eligibility at the time of filing of the underlying petition. On motion, the Petitioner submitted the following evidence:

1. Letter from counsel;
2. Article from *Occupational Outlook Handbook* printout regarding Personal Financial Advisors
3. Article from U.S. Department of Commerce Strategic Plan 2022-2023
4. Letter of intent and support from Karina Ogai
5. Letter of intent and support from Zabiniso Mukhamadieva
6. Letter of intent and support from Samuel Attias EA

The Petitioner also asserted that previously submitted documentation submitted in support of the petition, as well as its business plan submitted in response to the Director's request for evidence (RFE), demonstrated that she satisfied all three of the *Dhanasar* prongs.

After review of the statements submitted on motion and the accompanying documentation, we concur with the Director's determination. On motion, the Petitioner primarily relied on the incorporation of her company subsequent to the petition's filing and her reliance on the company's business plan submitted in response to the RFE. The Director determined that such evidence was not probative because the Petitioner was required to demonstrate eligibility at the time of filing. On appeal, we note the Petitioner's repeated assertions that incorporation of her limited liability company and its accompanying business plan demonstrate the substantial merit and national importance of her proposed endeavor, but for the same reasons noted by the Director, we find this documentation insufficient. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit sought at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition that has already been filed to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Rather than stating new facts supported by documentary evidence, the Petitioner maintained that its previously submitted evidence was sufficient to overcome the Director's adverse findings.

Further, we agree with the Director's determination that the submission of articles and letters on motion did not reveal facts that could be considered *new* under 8 C.F.R. 103.5(a)(2). The Petitioner previously submitted numerous industry articles and reports discussing the importance of the financial industry and related careers as well as the positive effects foreign investment can have in U.S. businesses. However, merely working in the field of financial management or starting a financial advisory services business is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we noted 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 newly submitted industry reports and articles submitted on motion do not discuss any projected U.S. economic impact or job creation specifically attributable to the Petitioner's proposed endeavor.

In addition, the intent letters submitted on motion do not state new facts. Two of the letters are from individuals stating they intend to use the Petitioner's company for financial services, which we again note

was established after the petition's filing, and one letter is a "professional recommendation" that generally praises the Petitioner's skills but offers no details regarding the nature of the writer's relationship with the Petitioner or knowledge of her work. The Director noted that the letters did not warrant a change in the adjudication decision of the petition, and we agree. The letters did not contain sufficient details to reflect sufficient interest from potential customers nor did they show that her past experience renders her well positioned to advance her proposed endeavor.

For the reasons outlined above, we find no error in the Director's decision dismissing the motion to reopen.

B. Motion to Reconsider

The Director dismissed the motion to reconsider on the basis that it did not provide reasons for reconsideration that were supported by citations to appropriate statutes, regulations, or precedent decisions, and it did not show that the decision was incorrect based on the evidence of record at the time of the decision. Upon review of the Petitioner's submissions on motion, we agree that the motion did not satisfy the requirements of a motion to reconsider.

Although the Petitioner states on appeal that the Director's March 14, 2024 decision was based on an incorrect application of law or policy, she focuses her appellate assertions on challenging the determinations made by the Director in denying the underlying petition. She makes no specific assertion of error with regard to the decision dismissing the combined motions, and instead maintains that her company's business plan and previously submitted supporting documentation demonstrate her eligibility for a national interest waiver. The Petitioner did not specifically and sufficiently articulate why the Director's prior decision was based on an incorrect application of law or USCIS policy, nor did the Petitioner cite to any relevant statute, regulation or relevant precedent decision that would support a contention that the Director's decision was based upon a misapplication of statute, regulation, or policy to the evidence of record before the Director at the time of the decision. Rather, she simply reasserts facts already considered by the Director on appeal. We therefore conclude that the Director's decision dismissing the Petitioner's motion to reconsider was correctly decided.

III. CONCLUSION

The Director properly determined that the Petitioner's combined motions do not meet the requirements under 8 C.F.R. § 103.5(a)(2) and (3).

ORDER: The appeal is dismissed.