U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39270168

Date: SEP. 16, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a special needs educator, 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).

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish that a waiver of the job offer, and thus of the labor certification, would be in the national interest. We dismissed the Petitioner's subsequent appeal, two combined motions to reopen and reconsider, and two additional motions to reconsider. The matter is now before us on a fifth motion to reconsider. 8 C.F.R. § 103.5.

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.

I. LAW

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).

The scope of any motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Thus, our analysis for this combined motion is limited to whether the Petitioner submits new evidence or otherwise establishes that the dismissal of the prior motion to reconsider was based on an incorrect application of law or policy. 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).

In determining whether a petitioner merits a discretionary waiver of the job offer requirement "in the 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 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.

II. ANALYSIS

The Petitioner is a special needs educator at an elementary school who proposes to continue to work in the United States in her field. As noted above, SCOPS denied the petition. In our decision dismissing the appeal, we agreed with SCOPS's decision that the Petitioner did not demonstrate the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.[2] We dismissed the Petitioner's subsequent four motions as they did not meet the applicable requirements. 8 C.F.R. § 103.5(a)(4). We incorporate our prior decisions by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on this fifth motion.

In dismissing the immediate prior motion to reconsider, we determined the Petitioner did not provide a cogent argument as to how we misapplied the law or USCIS policy in the prior motion to reconsider, noting that evidence in the record had already been reviewed and discussed in prior decisions, and we correctly concluded the Petitioner did not demonstrate her proposed endeavor is of national importance under *Dhanasar's* first prong. In our decision, we cited *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006), to point out that the Petitioner did not meet the requirements of a motion to reconsider by broadly disagreeing with the conclusions of our prior decisions. We noted that the Petitioner must, instead, specify laws, regulations, precedent decisions, or binding policies believed to be misapplied in the prior decision. We acknowledged the Petitioner's repeated contention that we misapplied the preponderance of the evidence standard of proof in our evaluation of the evidence, citing *Chawathe*. However, we reiterated that we already considered and analyzed the Petitioner's evidence in the petition under the preponderance of the evidence standard and found it insufficient to demonstrate eligibility for the requested benefit. Because the Petitioner did not address or provide reasons for reconsideration of the conclusions in our prior decision, we dismissed the motion to reconsider.

The purpose of a motion to reconsider is to show error in the most recent prior decision. Here, the Petitioner's current motion to reconsider does not meet this standard.

In the Petitioner's current motion brief, she contends that "USCIS failed to properly apply the correct 'preponderance of the evidence' standard" and that "the AAO's analysis is irrational, arbitrary and capricious." The Petitioner, as she has in her previous motion briefs, again references information in previously provided industry reports and letters of support[3] concerning the field of education and her experience and qualifications as a special needs educator. She again relies on the purported importance of her field of work as indicative of the national importance of her endeavor to continue her work as a

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeal in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[2] We reserved our review of the Petitioner's eligibility under *Dhanasar's* second and third prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

[3] The current motion includes a new letter of support from a colleague which provides information similar to the letters previously submitted, including her dedication and her duties as an educator working with diverse learners.

special needs educator. Here, again, the Petitioner has not specified why the preceding motion decision was based on an incorrect application of law or policy. While the Petitioner indicates that we erred in our decision, she provides arguments similar to those presented in her prior motions and does not identify errors leading to our conclusions. As discussed in our prior decision, the Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; instead, the motion must demonstrate how we erred as a matter of law or policy. *See Matter of O-S-G-*, 24 I&N Dec. at 58 (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision). Again, as previously stated, we agree with our prior motion decisions that evidence in the record has already been reviewed and thoroughly discussed in previous decisions, and we correctly decided the Petitioner did not demonstrate her proposed endeavor is of national importance under *Dhanasar's* first prong.

The Petitioner also takes issue with our previous decision to dismiss her motion to reopen. In dismissing her motion to reopen, we explained that the purpose of a motion to reopen is to afford a petitioner an opportunity to submit new facts—facts that existed on the date a petition was filed—and to support those facts with evidence.[4] It is not intended to allow a petitioner to improve upon the previously deficient claims that failed to meet the clearly identified eligibility requirements. The Petitioner based her motion to reopen on a description of a proposed endeavor that differed noticeably from her prior descriptions. Although her initial petition, appeal, and motions referenced an endeavor to continue her work at a school as a special needs educator, her most recent motion described the following endeavor:

> . . . I am cognizant of the fact that not all special needs children and their families have the opportunity to avail themselves of public schooling or access requisite support services. . . .
>
> To bridge this crucial support gap, I am in the process of conceptualizing a digital platform christened [redacted] meticulously tailored to cater to the diverse needs of stakeholders invested in inclusive education. This groundbreaking platform will offer an exhaustive array of resources, tools, and workshops curated for educators, parents, and students alike, irrespective of ability. Through my social media platforms, I will foster awareness surrounding disabilities and disseminate content advocating for disability-inclusive education. Additionally, I will host complimentary workshops and podcasts designed to empower parents and educators with the requisite skills to effectively champion the cause of their children and students . . . .
>
> My primary objective is to forge a dynamic and interactive space conducive to the exchange and enhancement of knowledge surrounding inclusive practices, thereby nurturing a more supportive and efficacious educational milieu for all special needs children.
>
> [redacted] shall transcend the confines of a mere platform, evolving into a collaborative nexus where stakeholders converge to share insights and ideate collectively. This interactive forum will empower us all to elevate educational outcomes and champion inclusivity across the spectrum of diverse learning communities.

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

We determined that the Petitioner's new proposed endeavor constituted a material change to her petition. In dismissing her motion to reopen, we explained that a petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). We further explained that a petitioner may not make material changes to a petition that has already been filed in an effort to make a deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1988). In *Dhanasar,* we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *Dhanasar,* 26 I&N Dec. at 889. We concluded that the Petitioner had not identified a specific and consistent proposed endeavor and, therefore, had not established new facts overcoming our prior determinations and establishing eligibility.

On motion to reconsider, the Petitioner asserts that her description of her endeavor on motion to reopen was to clarify and elaborate on her proposed endeavor, stating that her "work as a Special Needs Specialist does not contradict her proposed employment as a Special Education Teacher; rather, it confirms her continuing engagement in her field of expertise and reinforces her capacity to fulfill the same national interest goals." Her brief provides the following:

> Here, the Petitioner has not changed the nature of her endeavor; she has merely clarified and expanded upon how she is currently pursuing her goal of contributing to the education and inclusion of students with disabilities . . . . This is a *permissible clarification of existing claims* and not a redefinition of the endeavor. As stated in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), a Petitioner must identify a **"specific endeavor"** and demonstrate its merit and national importance. The Petitioner did just that, repeatedly articulating her dedication to **special education** and consistently aligning her duties with that national need.[5]

Upon review, the Petitioner has not identified a specific endeavor, but has described in general terms two separate endeavors. Although the Petitioner indicates that the differing depictions of her endeavor should be seen as a single endeavor, her contention relies solely on an explanation that they fall under the broader category of the provision of special needs services. She does not offer an explanation of how we erred in determining that she had proposed two separate endeavors. The Petitioner initially described an endeavor in which she intended to perform the "core duties" of providing "individualized instruction" to students and other "standard responsibilities associated with special education teaching." Later, on motion, the Petitioner described an endeavor in which she intended to create what she referred to as "a digital platform" and "social media platforms"—an "interactive forum" that she described as "groundbreaking" and asserted would "transcend the confines of a mere platform." The Petitioner has not provided a consistent description of a specific proposed endeavor. Her insistence to the contrary, without further evidence, does not make it so.

[5] We note that the Petitioner also asserted that her implementation of "her plan at a different school does not amount to a substantive deviation" from her initial proposed endeavor. Our dismissal of her motion to reopen did not take issue with her intention to work at a different school.

A motion to reconsider does not entail de novo review of the entire record of proceeding, and a petitioner's general assertion that the record supports approval of the petition cannot suffice as a basis for reconsideration. The purpose of a motion to reconsider is to show error in the most recent prior decision. The Petitioner's latest filing does not meet this standard. We addressed the Petitioner's prior arguments in our earlier decisions, and the Petitioner's repetition of the same or similar arguments does not show proper cause for reconsideration.

III. CONCLUSION

The Petitioner has not established that the dismissal of the prior motion to reconsider was based on an incorrect application of law or policy at the time we issued our decision, warranting reconsideration of our decision. Therefore, the motion will be dismissed. 8 C.F.R. §103.5(a)(4).

ORDER: The motion to reconsider is dismissed.

NOTICE: Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.