U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33968656

DATE: SEP. 24, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 record did not establish the Petitioner's eligibility for the requested national interest waiver. The Director dismissed a subsequently filed motion to reopen and motion to reconsider. The Petitioner now appeals the Director's dismissal of the combined motions pursuant to 8 C.F.R. §§ 103.3 and 103.5(a)(6).

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:

- The proposed endeavor has both substantial merit and national importance;

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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 affidavits or other documentary evidence.[2] 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that the 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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

As a preliminary matter, we emphasize that the appeal before us relates to the Director's April 2024 dismissal of the Petitioner's combined motions to reopen and reconsider, not the July 2023 denial.[3] Therefore, the question before us is whether the Director erred in dismissing the motions. Although the July 2023 denial is not the basis of the appeal, we will refer to portions of that decision because it informs our review of the Director's decision dismissing the combined motions.

In their July 2023 denial, the Director concluded that the Petitioner did not establish eligibility for a national interest waiver under the *Dhanasar* three-prong analytical framework. *See Matter of Dhanasar*, 26 I&N Dec. at 889. Specifically, the Director determined that the record did not establish the Petitioner's endeavor of operating a dental clinic would result in broader implications to her field—beyond the direct benefits to her prospective patients—or otherwise result in substantial economic benefits contemplated in *Dhanasar*. And, while the Director acknowledged the Petitioner's claims regarding a shortage of dental professionals, they explained that a shortage of professionals alone does not demonstrate the national importance of her individual endeavor. Additionally, the Director acknowledged the Petitioner's experience in the field, but nonetheless concluded that the record did not establish she was well-positioned to advance her endeavor. The Director also concluded that the Petitioner had not established, on balance, that it would be beneficial for the United States to waive the job offer requirement.

As stated, following the denial of their petition, the Petitioner filed a combined motion to reopen and reconsider. On motion, the Petitioner submitted primarily the same evidence previously submitted, including her business plan, documents evidencing her education and professional experience, as well as industry articles discussing the dentistry field more broadly. Additionally, she offered the same or similar arguments asserting her eligibility for the national interest waiver which she previously made before the Director without addressing the conclusions made in the Director's decision regarding these assertions. The Director determined that the Petitioner did not provide new facts or give reasons for reconsideration supported by pertinent precedent decisions to overcome the basis for the Director's denial, and as such concluded that the motions did not meet the applicable requirements.

[2] *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).
[3] 8 CFR §103.5(a)(6).

On appeal, instead of contesting the reasons for the Director's adverse decision on the motions, the Petitioner resubmits her business plan and her education evaluation previously submitted before the Director, and asserts broadly that the Director's July 2023 denial was in error, referring specifically to portions of that decision only. In doing so, the Petitioner fails to specifically identify an erroneous conclusion of law or statement of fact in the Director's most recent decision dismissing the motions, which is the decision on appeal. The reason for filing an appeal is to provide an affected party with the means to remedy what they perceive as an erroneous conclusion of law or statement of fact within a decision in a previous proceeding. *See* 8 C.F.R. § 103.3(a)(1)(v). It is insufficient to broadly assert that the Director made an improper determination. Where a question of law is presented, supporting authority should be included, and where the dispute is on the facts, there should be a discussion of the particular details contested. *Matter of Valencia*, 19 I&N Dec. 354, 355 (BIA 1986). As the Petitioner does not contest the Director's most recent decision, this alone is a basis for dismissal.

Nonetheless, upon a de novo review, we conclude that the Director properly dismissed the combined motions to reopen and reconsider. On appeal, the Petitioner attempts to overcome the Director's decision to dismiss her combined motion by pointing to the business plan and her credentials which were already submitted and properly analyzed by the Director, but the Petitioner does not establish how the Director erred in dismissing her combined motion. Additionally, the Petitioner asserts for the first time that her company will be involved in training professionals by implementing internship and residency programs, and training professionals on a number of techniques and advances in the Dentistry field. But, the Petitioner has not explained how this would result in broader implications to her field. And in *Dhanasar* we discussed how teaching would not impact the field of more broadly in a manner which rises to national importance. *Dhanasar* at 893. The Petitioner's combined motions did not overcome the reasons for the Director's denial, as the new evidence submitted, primarily a revised curriculum vitae and employer verification letter, did not establish her eligibility for the national interest waiver under the *Dhanasar* framework. Moreover, the motion did not identify an incorrect application of law or policy within the Director's decision supported by relevant caselaw, statute, or regulation.

Because the Petitioner's combined motion to reopen and reconsider did not contain new facts supported by affidavits or other documentary evidence overcoming the Director's decision and establishing her eligibility, and she did not demonstrate that the Director as a matter of law or policy, the Director properly dismissed her combined motion to reopen and reconsider. *See* 8 C.F.R. § 103.5(a)(4).

III. CONCLUSION

For the reasons above, the Petitioner has not shown that the Director erred in dismissing either the motion to reopen or to reconsider.

ORDER: The appeal is dismissed.