U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33567046

Date: SEPT. 24, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a quality control analyst and entrepreneur in the field of pet apparel, seeks employment-based second preference (EB-2) classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Texas Service Center Director denied the petition, concluding the Petitioner had not established eligibility for the underlying EB-2 classification or for a waiver of the job offer. We dismissed the 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 to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motions.

In dismissing the appeal, we reserved the EB-2 classification issue and agreed with the Director that the Petitioner did not establish her proposed endeavor satisfied the national importance aspect of the first prong under *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). Specifically, we concluded the Director properly analyzed the evidence to evaluate the Petitioner's eligibility by a preponderance of evidence. And we explained the Petitioner had not shown that her proposed endeavor sufficiently extends beyond her clients to impact the quality control industry or the economy at a level commensurate with national importance. In addition, we stated the Petitioner had not demonstrated that her revenue projections and potential business activity would provide an economic benefit such that it would rise to the level of national importance.

On motion, she states her "request for reconsideration is predicated on USCIS's clear misunderstanding of the critical elements surrounding her proposed endeavor" as well as "the significant contributions her work is projected to make within the pet apparel industry and beyond, particularly in quality control and consulting services." The Petitioner further states this motion "seeks to highlight the unparalleled national importance of the Petitioner's work, which aligns with several key Federal initiatives, including but not limited to enhancing product quality standards, bolstering

economic growth through superior consumer goods, and fostering job creation in critical HUBZone areas." Then, the Petitioner proceeds to discuss the Director's decision from April 2024.

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)(l)(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).

Here, the Petitioner does not identify a new fact, nor does she submit documentary evidence of such a fact in support of the motion. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." Because the submission does not identify a new fact, it does not satisfy the requirements of a motion to reopen. Therefore, the motion to reopen will be dismissed. 8 C.F.R. § 103.5(a)(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 analysis for the motion to reconsider is limited to whether, when dismissing the appeal, we erred in concluding the record did not establish that the Petitioner's proposed endeavor is of national importance.

The Petitioner generally alleges that we had a "clear misunderstanding" about her proposed endeavor, but she does not discuss how. She proceeds to assert her proposed endeavor has national importance and highlights that it aligns with federal initiatives, "including but not limited to enhancing product quality standards, bolstering economic growth through superior consumer goods, and fostering job creation in critical HUBZone area."[1] However, as discussed in our dismissal of the appeal, the Petitioner has not provided corroborating evidence to support these claims of her business' substantial economic benefits to the United States.

Moreover, the Petitioner focuses on the Director's decision and does not explain how our appeal decision was based on an incorrect application of law or policy based on the evidence in the record. As noted, our review is limited to reviewing our most recent decision, which in this case is our dismissal of the appeal, not the Director's denial.

The Petitioner has not established that we incorrectly applied any law or policy or that our decision was incorrect based on evidence in the record at the time of the decision, as required by 8 C.F.R. § 103.5(a)(3). Accordingly, we conclude that the motion does not meet all the requirements of a motion to reconsider and must therefore be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

[1] Regarding the HUBZone area, the Petitioner has not offered sufficient evidence to establish that her business would operate in a HUBZone area. Further, she did not indicate that her endeavor would participate in the HUBZone program or that it would be eligible to do so.

The Petitioner has not established that our dismissal of the appeal was based on an incorrect application of law or policy warranting reconsideration of our decision; or that a new fact, supported by evidence, shows proper cause to reopen our appeal decision. Therefore, we affirm our previous determination.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.