U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34062245

Date: SEPT. 27, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a chef and entrepreneur, seeks employment-based second preference (EB-2) 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 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 that, although the Petitioner qualifies for the EB-2 classification as an advanced degree professional, the record did not establish that a waiver of the job offer requirement is in the national interest. 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 determined that the record did not demonstrate the Petitioner qualifies as an advanced degree professional.[1] Specifically, we explained that the credential evaluation does not state that the Petitioner's foreign degree is equivalent to a U.S. bachelor's degree, but rather that the recommended U.S. equivalency is "completion of at least three and one-half years of course work" toward a four-year bachelor's degree program at an accredited institution of higher education in the United States. We also concluded the Petitioner had not submitted sufficient evidence, in accordance with the regulation at 8 C.F.R. § 204.5(g)(1), to establish at least five years of progressive experience in the specialty following attainment of a bachelor's degree. We explained that, although the Petitioner provided letters of recommendation, only one of them was from a former employer and that it described her training during an internship that was completed prior to obtaining her degree in 2018.

[1] An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

Regarding the Petitioner's request for a national interest waiver, we concluded the Petitioner met the substantial merit element of the first prong of the *Dhanasar* analysis but did not demonstrate that the potential prospective impact of the endeavor rises to the level of national importance. We addressed the Petitioner's contentions that the Director considered only the endeavor's geographical breadth and potential to employ U.S. workers and did not sufficiently consider that the endeavor impacts a matter that is the subject of national initiatives, as well as the Director improperly relying on *Matter of New York State Department of Transportation (NYSDOT)*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998).

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). 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)(l)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner states that our conclusion that she does not possess the equivalent of a U.S. bachelor's degree "was clearly incorrect based on the evidence in the record of proceedings at the time of its issuance" and references her foreign degree, transcripts, American Association of Collegiate Registrars and Admissions Officers Electronic Database for Global Education (EDGE), and the credential evaluation. But the Petitioner does not address the deficiencies outlined in our decision regarding the credential evaluation's repeated conclusion that the U.S. equivalency of her academic studies is a "completion of at least three and one-half years of course work" toward a four-year bachelor's degree program at an accredited institution of higher education in the United States. Notably, the evaluation relies on the "three-for-one" rule, which according to the evaluator, "states that three years of work experience and/or specialized training is equivalent to one year of corresponding university-level training." The evaluator's reliance on the "three-for-one" rule is misplaced. The "three-for-one" rule is not contained in the regulations regarding the immigrant employment petitions. *See* 8 CR 214.2(h)(4)(iii)(D) (limiting the "three-for one" rule only to education and specialized training requirements of the H visa).

The Petitioner also states she submitted sufficient evidence showing that she has at least five years of post-baccalaureate work experience in the occupation, but does not address our conclusion that the letters do not meet the regulation at 8 C.F.R. § 204.5(g)(1), which states that evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the petitioner or of the training received. As noted in our appellate dismissal, only one of the letters was from a former employer and although the letter described the Petitioner's training, it was prior to her obtaining her degree in 2018. Therefore, the record does not establish that the Petitioner possessed at least five years of progressive post-baccalaureate experience in the specialty.

Because the Petitioner has not established that her degree is the foreign equivalent of a U.S. bachelor's degree or that she has five years of progressive experience in the specialty, we cannot conclude that the Petitioner has established eligibility as an advanced degree professional. For this reason alone, the petition is not approvable.

Regarding national importance, the Petitioner continues to claim that we only considered the proposed endeavor's geographical implication and potential to employ U.S. workers rather than "the applicable criterion (national initiative) for establishing national importance." She asserts that her "services do generate broader positive implications rising to a national scale of benefits." While we acknowledge the submission of three articles regarding nutrition and food/nutrition consultants generally, they focus on the importance of the field and not the Petitioner's specific endeavor. When determining national importance, the relevant question is not the importance of the industry, sector, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016).

The Petitioner also highlights that her proposed endeavor will "be beneficial not only to herself and her clientele but most importantly to the US healthcare system and economy due to the solid prospective of potential of increasing [small to medium-sized businesses] operational acumen, thus elevating the employment level, businesses' revenue, and country's international leadership." 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.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, 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. Therefore, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.