U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39602207

Date: SEP. 29, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, an international development specialist, 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 record did not establish that a waiver of the required job offer, and thus of a labor certification, would be in the national interest. We dismissed a 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 by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the combined motions.

We incorporate by reference our analysis in our prior decision. By way of summation, and in relevant part, the Petitioner described her proposed endeavor as a plan "to continue to engage professionally in initiatives and projects in the field of international development finance in the power sector, and to contribute to, and advance the overall aims of, my field of expertise in which I have been involved during my professional career." At the time the Petitioner filed the Form I-140, Immigrant Petition for Alien Workers, she did not indicate that the proposed endeavor would include plans to open and operate a startup consulting services company. However, in response to SCOPS' request for evidence (RFE), the Petitioner stated for the first time that she intended to open and operate a startup consulting services company as part of her endeavor. In our prior decision, we noted that this new set of facts cannot establish eligibility. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971); *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Because this new set of facts cannot establish eligibility, we disregarded it and we reviewed the Petitioner's proposed endeavor as established at the time she filed the Form I-140, including information submitted in response to SCOPS' RFE consistent with that description. We ultimately determined that the record does not establish that the proposed endeavor, as established at the time of filing, has national importance, as required in part by the first *Dhanasar* prong, which is dispositive. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). Therefore, we dismissed the appeal.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Because the scope of a motion is limited to the prior decision, we will review only the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (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).

On the instant Form I-290B, Notice of Appeal or Motion, the Petitioner indicated, "I am filing a motion to reopen and a motion to reconsider. I have attached a brief and/or additional evidence." The Petitioner also submitted a brief, which indicates the filing is a "motion to reconsider and reopen." However, the Petitioner also indicated in the brief that she is "basing this motion on the evidence of record at the time of the decision and [she is] not introducing new facts or evidence into the record at this time." On motion, the Petitioner does not state a new fact, nor does she support such a new fact with documentary evidence. Therefore, the motion does not satisfy the plain language requirements of a motion to reopen, and we will dismiss it. 8 C.F.R. §§ 103.5(a)(2), (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).

On motion, the Petitioner asserts that we "erred . . . by incorrectly concluding that [she] made an impermissible material change to her proposed endeavor, which led to a failure to review the totality of the evidence in the record." She states on motion that, both at the time of filing and in response to the RFE, she "describe[d] her endeavor to be to continue to work in her field of expertise and to work with US agencies, governments, and multilateral development institutions and private investors, among others." Therefore, the Petitioner asserts on motion, "the fundamentals of the more detailed proposed endeavor remained the same." She characterizes her RFE response as "providing more detail with respect to her proposed endeavor, including on how she was planning to implement it, providing more context and emphasizing certain aspects of her expertise," rather than "substantively changing her proposed endeavor." She states that our prior decision was unduly "'inflexible' when analyzing the proposed endeavor" and that, by disregarding the new set of facts submitted for the first time in her RFE response, we "failed to properly weigh the evidence provided in the entirety of the file."

In support of this, the Petitioner cites a statement from *Dhanasar*, "Today we vacate *NYSDOT* and adopt a new framework for adjudicating national interest waiver petitions, one that will provide greater clarity, apply more [flexibility] to circumstances of both petitioning employers and self-petitioning individuals and better advance the purpose of the broad discretionary waiver provision to benefit the United States." *Matter of Dhanasar*, 26 I&N Dec. at 888-89. She also cites a supplementary notice to the regulations implementing the Immigration Act of 1990, stating that "The Service believes it appropriate to leave the application of this test as flexible as possible. . . . Each case is to be judged on its own merits." Employment-Based Immigrants, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (implementing section 121 of the Immigration Act of 1990). She characterizes these two excerpts as law or policy that we incorrectly applied in our prior decision, and she requests us to "reconsider[] the prior finding of there having been a 'fundamental change' to the proposed endeavor."

A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility

or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. at 49. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to U.S. Citizenship and Immigration Services requirements. *See Matter of Izummi*, 22 I&N Dec. at 176.

Both at the time of filing the Form I-140 and in response to SCOPS' RFE, the Petitioner described the proposed endeavor as continuing to work "in the field of international development finance in the power sector." However, as we observed in our prior decision, the Petitioner stated for the first time in response to SCOPS' RFE that the proposed endeavor would entail opening and operating a startup consulting services company beyond generally working in the same field; therefore, the proposal to open and operate a consulting services company presents a new set of facts that did not exist at the time the Petitioner filed the Form I-140. Whether the Petitioner would work for an existing company or open and operate her own startup consulting services company is material to determining whether the proposed endeavor has national importance under the first *Dhanasar* prong because it pertains to whether—and the manner and the extent to which—the proposed endeavor may have national or even global implications within a particular field, significant potential to employ U.S. workers, other substantial positive economic effects, or other indicia of national importance. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. Because the proposal to open and operate a startup consulting services company presents a new set of material facts that did not exist at the time the Petitioner filed the Form I-140, it cannot establish eligibility, and we correctly disregarded that new set of facts in our prior decision. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176.

The Petitioner's assertions on motion regarding "flexibility" are unpersuasive. *Dhanasar* articulates a framework for determining whether an endeavor is in the national interest, as contemplated by section 203(b)(2) of the Act, more flexible than the preceding framework, which considered in relevant part whether an endeavor would be "national in scope." *Matter of Dhanasar*, 26 I&N Dec. at 886-87. *Dhanasar* does not purport to establish flexibility in determining whether a petitioner presents a new set of material facts that did not exist at the time a petitioner filed a benefit request. Similarly, the context of the Immigration Act of 1990 implementation notes' usage of "flexibility" is as applied to determining whether an endeavor is "in the national interest," not whether a record contains a new set of material facts that did not exist at the time a petitioner filed a benefit request. Employment-Based Immigrants, 56 Fed. Reg. at 60900. Because the Petitioner does not identify a law or policy we misapplied, and because the decision was correct based on the record at the time of the prior decision, the motion to reconsider will be dismissed. 8 C.F.R. §§ 103.5(a)(3)-(4).

ORDER: The motion to reopen is dismissed.

FURTHER 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.