U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34272263

Date: SEP. 30, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur, 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).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish the Petitioner's eligibility for a national interest waiver. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and 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 motion.

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)(1)(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 motion, the Petitioner submits a brief arguing that the AAO failed to adequately consider all evidence submitted on appeal and before the Director.

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)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner relies on our precedent decision in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). The Petitioner contends that our decision strayed from the requirements of *Dhanasar* by imposing

"standards and requirements not found or grounded in the precedent law." The Petitioner also argues that *Buletini v.INS*, 850 F. Supp. 1222 (E.D. Mich. 1994), was improperly addressed in our prior decision, as both the Director's decision and our decision on appeal omitted consideration of evidence "not only individually but also collectively." In turn, the Petitioner contends that this "omission led both bodies to make an arbitrary and unjustified decision, thereby committing an abuse of discretion." Specifically, the Petitioner asserts that our decision did not consider the impact or the significant potential to employ US workers outlined in the endeavor, and instead appeared to demand a specific number of jobs. The Petitioner argues that this also demonstrates a failure to fully consider all evidence, particularly data that was contained in the business plan. The Petitioner concludes that she has shown "that there is more than just basic economic activity, which in the AAO's own words in this case, impacts a local economy," thereby meeting the national importance standard.

The Petitioner also claims that our decision did not adequately consider articles and government communications regarding the importance of minority-owned small businesses; the Petitioner contends that it was error to treat these articles as indicative of the proposed endeavor's substantial merit but not consider them as demonstrative of the endeavor's national importance. Overall, the Petitioner asserts that "the language contained within the AAO Decision suggests that the assessment of the appeal was undertaken with a similar level of lack of discretion due to the imposition of standards and requirements not found or grounded in the precedent law."

After review, we conclude that our prior decision correctly applied the *Dhanasar* framework in assessing the national importance of the proposed endeavor. Contrary to the Petitioner's assertions, we see no evidence that our decision imposed novel standards or requirements. The Petitioner implies that we based our analysis on a requirement that a particular number of workers be employed, but our prior decision imposes no such requirement. Rather, our decision explained that the Director had evaluated prospective impact in various ways, including employment of workers, tax or business activity, as well as the potential to impact the audiovisual production field more broadly. We ultimately agreed with the Director that the Petitioner had not adequately outlined the basis for the prospective economic growth or otherwise demonstrated an impact extending beyond her immediate clientele. While the Petitioner may disagree with our decision in this case, she has not demonstrated an incorrect application of law or policy underpinned our determination.

The Petitioner's assertion that we incorrectly analyzed the proffered articles relating to small businesses and economic work by minority-owned companies is also unfounded. The Petitioner contends that this evidence was submitted to show the national importance of her endeavor, not only to show its substantial merit. These articles outline general government support for a broad range of businesses activities that could include the Petitioner's proposed work. With respect to substantial merit, *Dhanasar* indicates that "an endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism" and other areas, but nonetheless highlights that the analysis "focuses on the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N at 889. In considering national importance, *Dhanasar* directs us to consider the potential prospective impacts, again of the specific endeavor, which may include advances in a field, "significant potential to employ U.S. workers," or other "broader implications." *Id.* at 889-90. The proffered articles are not specific to the Petitioner's proposed endeavor related to audiovisual entrepreneurship.

The Petitioner also argues that we necessarily omitted evidence in the record from our analysis, as we did not specifically analyze her intention to work in opportunity zones in the [redacted] area or cite other data from her business plan.[1] The Petitioner contends that this information allows her to satisfy the *Dhanasar* precedent for national importance, as she would be providing "substantial positive economic effects…in an economically depressed area." However, our prior decision did consider this evidence, ultimately concluding that the proposal was insufficiently detailed or supported to demonstrate that any impacts would necessarily be felt in an economically depressed area to an extent consistent with national importance.

The Petitioner indicated that she would "help increase the productivity of small businesses located in the opportunity zone…through training in project management and the creation of high-quality audiovisual content." Our appeal decision acknowledged this intent, but found it insufficiently persuasive, as she lacked a physical location for the business and had not sufficiently demonstrated that the work would be carried out in an IRS opportunity zone. The Petitioner claims that these concerns would have necessarily been resolved with a review of the Petitioner's business plan, as the plan indicated the "market segmentation and sectors that the petitioner's work would benefit" and that the work would be carried out in statistically defined opportunity zones. However, while we have reviewed the record and agree that the Petitioner made such assertions, our decision rested on a lack of adequate foundation and support for these claims. We appreciate that the Petitioner disagrees with our analysis of this record evidence, but she has not demonstrated that we omitted or ignored this evidence from consideration such that our decision was incorrect.

The Petitioner has not submitted additional evidence in support of the motion to reopen, instead relying on the previous record. 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 motion 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.

[1] In the motion brief, the Petitioner claims that the AAO decision indicated that we were "not required to review every piece of evidence." This is a misstatement of our appeal decision; we instead indicated that we were not required to provide an individualized written analysis for each piece of evidence in the record. As we indicated on appeal, the record was reviewed in its entirety in reaching the final determination.