U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18667687

Date: DEC. 13, 2021

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an historical architect, seeks second preference 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 EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition and a subsequent motion, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

We dismissed the subsequent appeal, concluding that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the analytical framework described in the precedent decision Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016). In our decision, we declined to comment on whether the record demonstrated eligibility under the second and third prongs outlined in Dhanasar. The Petitioner filed a combined motion to reopen and reconsider, which we dismissed as the Petitioner had not met the requirements for a motion to reopen or a motion to reconsider. The matter is before us again on a second combined motion to reopen and reconsider. We affirm our prior conclusion that the Petitioner has not met the requirements for such motions, nor has she established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the combined motion.

I. LEGAL FRAMEWORK

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must (1) state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services

(USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the applicant has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, an applicant must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. See 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

As a preliminary matter, we note that by regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). The issue before us is whether the Petitioner has submitted new facts to warrant reopening or has established that our decision to dismiss the prior combined motion was based on an incorrect application of law or USCIS policy. We therefore incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Applicant's claims on motion.

A. Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). The regulation at 8 C.F.R. § 103.5(a)(2) does not define what constitutes a "new" fact, nor does it mirror the Board of Immigration Appeals' (the Board) definition of "new" at 8 C.F.R. § 1003.2(c)(1) (stating that a motion to reopen will not be granted unless the evidence "was not available and could not have been discovered or presented at the former hearing"). Unlike the Board regulation, we do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

On motion to reopen, the Petitioner submits the following evidence:

- A May 2021 letter from [redacted] a professor and chair of [redacted] University's Department of History of Art and Architecture.
- A May 2021 letter from [redacted] the president of the [redacted]
- A website printout of a 2016 article concerning three benefits of having cultural center;
- A website printout of an article concerning the impact of cultural center activities on communities;
- A 2013 online article published in the International Journal of Science and Research concerning the role of cultural institutions in civic education;
- A May 2021 letter from [redacted] the president of [redacted]
- A 2011 article concerning [redacted], published in an online version of The National; and

- A May 2021 letter from [redacted] former director of the [redacted] [redacted] and university professor.

On motion, the Petitioner asserts that her proposed endeavor is nationally important because it broadly enhances cultural enrichment. The motion appears to request that we consider the record de novo; however, per the regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i).

In his one-page letter, [redacted] states that he invited the Petitioner to present a lecture at his institution in October 2018 and describes the unexpected success of the event. Because the event described by [redacted] occurred after the petition filing date in 2017, as well as after the Director's initial decision in 2018, it does not establish eligibility at the time of filing. A petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1). Additionally, as explained in our prior decision, to the extent that the Petitioner asserts that her speaking engagements at conferences and universities are part of her proposed endeavor, that presents a set of facts that did not exist at the time of filing. A visa petition may not be approved after a petitioner or beneficiary becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(1); see also Matter of Michelin Tire Corp., 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). 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 (USCIS) requirements. See Matter of Izummi, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Because, at the time of filing, the proposed endeavor did not include speaking engagements at conferences and universities, the fact that the Petitioner speaks at conferences and universities cannot establish eligibility as part of the proposed endeavor.

Additionally, and as already explained in our prior decision, the Petitioner's motion on the Director's decision included evidence that she would "speak about employing historic Persian forms in her architectural design practice in [redacted]" at [redacted] University on October 24, 2018. Therefore, the fact that the Petitioner lectured at [redacted] University in October 2018 is not new because that information was previously submitted in the proceeding as well as with the prior motion on our decision to dismiss the appeal. Accordingly, to the extent that the Petitioner asserts that her work is nationally important because she speaks about it at conferences and universities, we need not consider such events as they are not new.

Finally, even if this evidence could be considered on motion, the Petitioner has not explained how the [redacted] University lecture in October 2018 or any other speaking engagements at conferences and universities would have national importance. The information and evidence provided does not suggest that the Petitioner's activities in this regard would have broader implications in the field or extend beyond the individuals who attend her lectures or experience her presentations. Accordingly, even if we accepted this evidence for consideration, it would not establish eligibility.

[redacted] the president of the [redacted] describes the Petitioner as having extensive experience in Islamic architecture and expresses an intention to engage her as specialist consultant for the design of an Islamic cultural center. However, [redacted] does not state when he plans to engage the Petitioner, for how long, or what her duties would be as a specialist consultant. As this letter is dated in May 2021 and references speculative work, these future activities do not assist the Petitioner in establishing eligibility at the time of filing. Even if we considered the activities as part of the proposed endeavor, the Petitioner has not established what impact this specific cultural center would have. For instance, the Petitioner has not explained how the benefits of the cultural center would be so substantial as to rise to the level of national importance. More importantly, the Petitioner has not explained how her role in the design of the cultural center is nationally important. For example, she has not identified how her input on the design of the center imbues the center with additional broader cultural enrichment that it would not otherwise have without her design consultant services. Although we acknowledge the articles concerning cultural centers, we conclude that this evidence does not demonstrate how the work described in [redacted]'s letter would be nationally important. In addition, the articles do not discuss the specific cultural center the Petitioner proposes to consult on, nor do they discuss the Petitioner's role in such cultural centers. Accordingly, we conclude that even if this future work could be considered as establishing eligibility at the time of filing, it would not establish the national importance of the proposed endeavor.

According to his May 2021 letter, the president of [redacted], [redacted], proposes to engage the Petitioner as a scholar, teaching weekend classes for the public. The Petitioner's proposed endeavor at the time of filing did not include teaching classes at a [redacted]-based bookstore and therefore, these new activities cannot establish eligibility at the time of filing. Moreover, even if these activities could be considered, the proposed activities would not rise to the level of national importance. It is not apparent from this letter how many classes the Petitioner would teach, how often, for how long, or how many people would attend the classes. The evidence does not establish how the Petitioner's teaching activities would extend beyond the individuals that happen to attend. In Dhanasar, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. See Dhanasar, 26 I&N Dec. 884 at 893. For the same reason, we conclude that the Petitioner's proposed future teaching activities do not rise to the level of having national importance. Although the article about [redacted] provides useful background, the article does not establish that the Petitioner's proposed endeavor would have broader implications in the field or enrich societal culture to such an extent as to satisfy the national importance requirement of the first prong. As such, we conclude that, to the extent this evidence may be considered, it does not satisfy the Petitioner's burden under the Dhanasar framework.

Lastly, we turn to the May 2021 letter from [redacted] former director of the [redacted] and university professor. [redacted] praises the Petitioner's personal and professional qualifications but does not demonstrate knowledge of the proposed endeavor. In addition, he writes about the Petitioner's past work, which would not be considered a new fact. Furthermore, the Petitioner's past work, along with her qualifications, are a consideration under the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has substantial merit and national importance under *Dhanasar's* first prong. Accordingly, this letter does not assist the Petitioner in establishing eligibility.

Upon review of the evidence submitted with the motion, we conclude that some of the evidence is not new, while other evidence cannot be considered as part of the proposed endeavor that would establish eligibility at the time of filing. Moreover, even if the proposed future work could be considered, the activities described would not rise to the level of national importance. We conclude that the additional evidence submitted in support of the motion to reopen does not establish that the Petitioner's proposed endeavor has national importance. Therefore, the Petitioner has not shown she is eligible for the benefit sought and the motion to reopen must be dismissed.

B. Motion to Reconsider

As discussed, a motion to reconsider must establish that our prior decision misapplied law or USCIS policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). The Petitioner does not specifically assert on motion that our decision was based on an incorrect application of Dhanasar, based on the evidence in the record of proceedings at the time of the decision. Instead, the Petitioner generally requests us to reach a different conclusion based on a review of the entire record along with the evidence discussed above, in the context of a motion to reopen. We affirm that our decision correctly applied Dhanasar, and that it was correct, based on the evidence in the record at the time of the decision. The Applicant has not shown that our previous decision was based on an incorrect application of law or USCIS policy. Accordingly, the motion to reconsider will be dismissed.

III. CONCLUSION

For the reasons discussed, the evidence provided in support of the motion to reopen does not overcome the grounds underlying our prior decision, and the Applicant's motion to reconsider has not shown that our prior decision was based on an incorrect application of law or USCIS policy. Therefore, the combined motion to reopen and reconsider will be dismissed for the above stated reasons.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.