U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19299651

Date: NOV. 30, 2021

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks the 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 Texas Service Center denied the petition, 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 provided consistent information regarding her proposed endeavor and thus has not established eligibility for a national interest waiver. The matter is before us again on a motion to reopen.

The Petitioner has the burden to establish eligibility for the requested benefit by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motion.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). The new facts must also be relevant to the grounds of the unfavorable decision. A motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884. *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well-positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

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 supported by documentary evidence to warrant reopening the petition. Upon review, we conclude that this motion does not meet the requirements of a motion to reopen under 8 C.F.R. § 103.5(a)(4).

We determined in our previous decision that the Petitioner did not establish eligibility for the petition because she has not provided consistent and probative information regarding her proposed endeavor.[2] Initially the Petitioner's "career plan in the United States [involved working] with a health care or research facility to conduct important research on various areas of mental health and provide expert advice and training to other professionals and students in the field" as a "clinical research coordinator."[3] In response to the Director's request for evidence (RFE) she provided an updated career plan that reflected a substantive change to her "overall proposed endeavor," stating she would "offer my expertise to work as a Research Coordinator, Consultant, and Business Coach, interacting with individuals who play decision-maker roles in the business field to advise them on improving performance and efficiency and maximize results for their companies." She further indicated that she is a co-owner of two companies focusing on data science and artificial intelligence and that her "proposed endeavor is to expand the performance of [her company], and continue creating new models of Artificial Intelligence, so that I can solve important questions from companies and other American organizations." The Petitioner also stated that "in the next 3 years," she "intend[s] to pursue a doctorate degree in Artificial Intelligence and Personality Theory" and that her "other personal goal is to continue to seek and dedicate time to voluntary work."

The Petitioner did not provide an explanation for the changes in her specific proposed endeavor in the RFE response (or on appeal). Ultimately, we affirmed the Director's determination in his denial that the Petitioner's RFE response presented a new set of facts regarding the nature of her proposed endeavor, which is material to eligibility for a national interest waiver.[4] As she did not consistently

[1] *See also Poursina v. USCIS*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).
[2] Our previous decision in this matter was ID# 10422400 (AAO APR. 22, 2021).
[3] The Petitioner's initially proposed Clinical Research Coordinator duties were copied verbatim from the Occupational Information Network (O*NET) for this occupation at https://www.onetonline.org/link/summary/11-9121.01.
[4] The Petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

describe her proposed endeavor, we determined that she did not demonstrate any of the prongs under the *Dhanasar* analytical framework or establish eligibility for a national interest waiver.[5]

On motion, the Petitioner requests that the petition be reopened to give her an opportunity to supplement the record with evidence to "prove that I can support and enhance the wealth and growth of the United States through my skills, knowledge and talent that I have had in the field of Psychology for more than 15 years." She asserts, among other things, that the petition contained various inaccuracies due to the "ineffective assistance of counsel," stating she was "unaware of what [her initial career plan] was about" as an individual employed by her counsel's law firm wrote it.[6] She explains that "the [clinical research coordinator occupation] was determined exclusively by the lawyer or any other employee of the [law firm]," and "did not match my professional background and my professional intentions in the United States." She further alleges that she provided her counsel with all of the evidence requested by the Director in the RFE but is unaware of what documents were "really sent to USCIS," as she "did not have access to the petition at any time, and the [RFE response was] elaborated by [her lawyer]."[7]

Within her motion, she reiterates her intention (which she first presented in her RFE response) to work in the United States "as a consultant psychologist, guiding important leaders and teaching them to make effective and right decisions, according to their personalities." However, the record does not substantiate her assertion that she was unaware of the content of her initial career plan or other documents filed in support of her petition. For instance, in 2018 she signed each page of the initial career plan submitted with the petition, in which she avers that she will work as a "clinical research coordinator." She also signed her 2019 career plan provided in response to the RFE in which she made only a passing reference to her initially stated intention to work as a clinical research coordinator (and instead predominantly focused on other proposed work activities as a consultant, business coach, teacher, entrepreneur, and student). We also note that the petition contains the Petitioner's signature in Part 8 in which she certified "under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct."[8] While the Petitioner alleges that she was unaware of the content of the documents submitted in support of the petition and "did not have access to the petition at any time," the evidence of record suggests otherwise.[9]

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[5] *See Dhanasar*, 26 I&N Dec. at 889-90.

[6] The Petitioner explains in her motion "a complaint [regarding the ineffective assistance of counsel in this petition] has not been filed with appropriate disciplinary authorities regarding such representation. In addition to waiting for a response from the [law firm] in regard of my allegations, I am looking for a lawyer to help me file a complaint with the disciplinary authority." If the Petitioner believes that an attorney or accredited representative has engaged in criminal, unethical, or unprofessional conduct while practicing before DHS she may file a complaint with the USCIS Disciplinary Counsel. *See* 8 C.F.R. § 292.2(d)(1). For further information, *see* AAO Practice Manual, Chapter 2, section 2.10 Rules of Professional Conduct, which may be accessed at https://www.uscis.gov/administrative-appeals/aao-practice-manual/chapter-2-representation-of-parties-before-the-administrative-appeals-office.

[7] If the Petitioner she wishes to obtain a copy of her USCIS records, she may file a Freedom of Information Act Request (FOIA request). *See* https://www.uscis.gov/records/request-records-through-the-freedom-of-information-act-or-privacy-act.

[8] A Petitioner's signature on an immigration benefit request establishes a strong presumption that he or she knows of and has assented to the contents of the request. *Matter of Valdez*, 27 I&N Dec. 496 (BIA 2018).

[9] The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Importantly, it would serve no useful purpose for the Petitioner to provide new evidence to establish eligibility that is materially inconsistent with the evidence initially provided in support of the instant petition. As discussed in our decision dismissing the Petitioner's appeal, a petitioner may not make material changes to a petition to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). If significant, material changes are made to the initial request for approval, a petitioner must file a *new petition* rather than seek approval of a petition that is not supported by the facts in the record. For the reasons discussed, the Petitioner has not presented on motion new facts to establish eligibility for the benefit sought.

III. CONCLUSION

As the Petitioner has not met the requirements for a motion to reopen, we affirm our prior conclusion that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver.

ORDER: The motion to reopen is dismissed.