U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17574494

Date: SEP. 15, 2021

Motion on Administrative Appeals Office Decision

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

The Petitioner, a financial manager, 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). The matter is before us again on a combined motion to reopen and motion to reconsider.

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. LAW

A motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law or policy*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

We concluded on appeal that the documentation in the record does not establish the national importance of the Petitioner's proposed endeavor, as required by the first *Dhanasar* prong. We will address the merits of the motion to reopen and the motion to reconsider separately.

First, our decision summarized the proposed endeavor as follows:

> [T]he Petitioner stated that she intends to continue to work as a financial manager. She indicated that her responsibilities include maintaining financial records, overseeing audits, managing the finance team, and communicating financial status reports to key players. The Petitioner further explained that her proposed endeavor involves "raising or acquiring funds . . . in the most economical way, utilizing those funds as profitably as possible, . . . planning the future investment of those funds, and controlling the current performance plus future development by adopting budgeting, cost accounting, and financial accounting." The record contains an October 2018 job offer from [redacted] a private security company, offering her "the position of Finance Manager."[1]
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> In response to the Director's request for evidence (RFE), the Petitioner presented an August 2019 letter from [redacted] president of [redacted] stating that the Petitioner's position involves supporting "senior management in managing operations against budget plus strategic goals on a daily, monthly, annual basis, and assist[ing] in developing as well as monitoring internal policies and procedures' control. Also, you could help management in making financial decisions and analyz[ing] working capital."
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> The Petitioner's response to the RFE also indicated that she seeks to play "a dynamic role in a modern company's development" and "to contribute to the fortunes of the firm and to the optimal growth of the economy as a whole." She explained that her proposed endeavor is aimed at "distilling complex financial data into clear, concise, and actionable reports that support executive decision making." The Petitioner also asserted that she plans to take on "the unique responsibility of managing assets and analyzing risks to ensure the future success of the company or organization."

[1] This letter listed the Petitioner's job duties as making accounting journal entries for financial transactions, keeping track of income and expenditures, creating financial transactions and posting information to accounting journals or software, performing general accounting duties, managing preparation and publication of company financial documents, and collaborating with management on development and execution of funding strategies. Additionally, the letter stated that her duties involve producing financial reports; developing long-term business plans; reviewing, monitoring, and managing budgets; helping management make financial decisions; and analyzing working capital to anticipate future cash flow problems. As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about her position to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

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."

We concluded in our decision that "the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her employer and future clientele to impact the financial management field or U.S. economy more broadly at a level commensurate with national importance." In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

On motion to reopen, the Petitioner submits only one attachment to her motion brief: a two-page letter dated October 2018 from the Petitioner to the president of [redacted] which is now the Petitioner's employer.[2] On motion, the Petitioner describes the document as an "application letter with the prospective employer wherein [I] presented [my] undertaking and strategic and business plan in terms of financial management." The letter informs the president that the Petitioner is "eager to use my experience and skills in financial services *to help your company and your employees*," that she "will *help you reach profitability* by month eight," and that she has "extensive knowledge of *how to manage a client's existing investments* so that they obtain maximum returns" (emphasis added).

The application letter submitted on motion, expressing the Petitioner's desire to help her employer and its employees by reaching profitability and to manage the employer's clients' investments, does not

[2] The Petitioner characterizes this letter as "newly discovered facts or changed circumstances," referencing *Doissaint v. Mukasey*, 538 F.3d 1167, 1170 (9th Cir. 2008). However, we note that the letter is not newly discovered by the Petitioner because it indicates that the Petitioner wrote it in October 2018. The letter also does not establish how a circumstance of record may have changed. Furthermore, we note that, unlike the posture of *Doissant*, the letter does not address an issue on motion that the adjudicating body deemed abandoned on appeal. *Id.* at 1169. Therefore, *Doissant* is inapposite in this matter.

On motion, the Petitioner also references attachments to her "initial submission" of the underlying petition, numbered 8-15. However, because the record contained those documents at the time of our decision, and because we considered the record in its entirety at the time of our decision, those documents do not present new facts on motion.

present a new fact that shows the proposed endeavor stands to sufficiently extend beyond her employer and future clientele.

Aside from the application letter for prospective employment, discussed above, the Petitioner asserts on motion that "[my] track record, achievements, awards, recommendations, [and] membership [show] that [my] proposed work will benefit the United States on a national scope." Although the Petitioner's prior work experience and accomplishments may address whether she is well-positioned to pursue the proposed endeavor, which is material to the second *Dhanasar* prong, they do not address how the proposed endeavor may be broad enough to rise to the level of having substantial positive economic effects, required by the first *Dhanasar* prong.

In summation, the Petitioner has not presented on motion a new fact that may establish eligibility under the first *Dhanasar* prong.

B. Motion to Reconsider

A motion to reconsider must establish that our 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). We do not consider new facts or evidence in a motion to reconsider.

The Petitioner does not specifically assert on motion that our decision was based on an incorrect application of *Dhanasar* or any other law or policy, based on the evidence in the record of proceedings at the time of the decision. Instead, the Petitioner generally describes the preponderance of evidence standard, referencing 61 Fed. Reg. 13,064 (Mar. 26, 1996), *In re Petitioner*, 2011 WL 7789867 (Aug. 9, 2011), *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965), *Matter of Chawathe*, 25 I&N Dec. 369, 376 (BIA 2010), and *Matter of E-M-*, 20 I&N Dec. 77 (BIA 1989), and asserts that she "has met and sustained that burden." The Petitioner also generally asserts that U.S. Citizenship and Immigration Services (USCIS) "abused its discretionary policy in failing to take into account and consider Petitioner's statement and supplemental documentary evidence and to follow policy of providing 'generosity of spirit' when reviewing applications in light of this COVID-19 pandemic and for humanitarian reasons."

A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition and must continue to be eligible for the benefit through adjudication. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after a petitioner becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). The Petitioner's reference on motion to COVID-19, which began in 2019, addresses facts that did not exist at the time of filing in 2018 and, therefore, may not establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Michelin Tire Corp.*, 17 I&N Dec. at 249. Furthermore, the Petitioner does not identify a particular source of law or policy for her referenced "policy of providing 'generosity of spirit.'" Likewise, the Petitioner does not identify a particular source of law or policy that requires USCIS to grant a discretionary national interest waiver "in light of this COVID-19 pandemic and for humanitarian reasons."

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, under the preponderance of evidence standard.

In summation, the Petitioner has not established on motion that our 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. Because we limited our appeal decision to an analysis of the first *Dhanasar* prong, and because our conclusion on that issue is dispositive, we need not address the Petitioner's assertions on motion regarding the second and third prongs of the *Dhanasar* framework.

III. CONCLUSION

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

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.