U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21763791

Date: AUG. 08, 2022

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 had 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 Petitioner filed a second combined motion to reopen and reconsider, which we also dismissed. The matter is before us again on a third 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

Initially, we note that motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. INS v. Doherty, 502 U.S. 314, 323, (1992) (citing INS v. Abudu, 485 U.S. 94, 108 (1988)); see also Selimi v. Ashcroft, 360 F.3d 736, 739 (7th Cir. 2004). There is a strong public interest in bringing proceedings to a close as promptly as is consistent with giving both parties a fair opportunity to develop and present their respective cases. INS v. Abudu, 485 at 107.

Based on its discretion, USCIS "has some latitude in deciding when to reopen a case" and "should have the right to be restrictive." Id. at 108. Granting motions too freely could permit endless delay when foreign nationals continuously produce new facts to establish eligibility, which could result in needlessly wasting time attending to filing requests. See generally INS v. Abudu, 485 U.S. at 108. The new facts must possess such significance that, "if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case." Matter of Coelho, 20 I&N Dec. 464, 473 (BIA 1992); see also Maatougui v. Holder, 738 F.3d 1230, 1239–40 (10th Cir. 2013). Therefore, a party seeking to reopen a proceeding bears a "heavy burden." INS v. Abudu, 485 at 110. With the current motion, the Petitioner has not met that burden.

On motion, the Petitioner submits a portfolio that includes what appears to be an autobiographical statement, followed by floor plans, photos, and other design, restoration, and installation ideas for the conversion of an existing historical building intended for the religious and cultural activities of the [redacted] We acknowledge the Petitioner's assertion that her proposed endeavor is nationally important because it broadly enhances cultural enrichment. However, the Petitioner offers little clarifying explanation or analysis to accompany her portfolio and therefore we cannot determine what specific evidentiary purpose it serves in this matter. Submitting additional samples or examples of the Petitioner's work, whether recently created, created prior to the filing of the petition, or yet to be

created will not necessarily satisfy the Petitioner's burden. We have already considered the type and quality of the Petitioner's work and therefore additional samples and examples of it would not be considered "new facts" upon which to sustain a motion.

The Petitioner requests that we view the samples and examples of her work as indicative of her proposed endeavor plans as a whole, rather than just viewing them as discrete individual projects. Similarly, the Petitioner requests that we view the national importance of the Petitioner's projects as a whole, rather than just analyzing the national importance of each individual project. She also requests that we consider her entire professional track record and to recognize that if she is granted lawful permanent residence, she will be able to more proactively seek work opportunities. The Petitioner asserts that her proposed endeavor broadly enhances societal welfare because she preserves buildings that are used to improve society, such as community centers and schools. She also argues that the prospective potential impact of her proposed endeavor would be to broadly enhance cultural and artistic enrichment. In support, she argues that her work in historical architecture is vital to understanding U.S. heritage.

While the Petitioner may be able to increase the number and scale of projects she undertakes as a lawful permanent resident, the purpose of the national interest waiver is not to enable a petitioner to engage in a U.S. job search. Furthermore, even if we view the projects individually and collectively as indicative of the type of work she undertakes, this would still not establish how her proposed endeavor broadly enhances cultural enrichment on such a scale as to rise to the level of national importance. For instance, even if we assume that numerous community centers and schools need or want the Petitioner's services, the Petitioner has not established how providing such services would constitute a broad enhancement of cultural and artistic enrichment or would have a societal impact on a nationally important scale. As our prior decision noted, the Petitioner has not explained how her role in the design of a cultural center is nationally important. For example, she has not identified how her input on the design of a center provides additional broader cultural enrichment that it would not otherwise have without her services. To further illustrate, she has not established that historical architecture services are not available in the United States or that her techniques are so unique and novel as to impact the field of historical architecture on a scale that rises the level of national importance.

Likewise, the recommendation letter from [redacted] the president of [redacted], does not provide insight as to how the Petitioner's proposed endeavor would have a societal impact rising to the level of national importance. Although [redacted] praises the Petitioner's talent, notes that she is a great resource, and states that he could use her expertise in his own work, he does not provide specific examples of how her proposed endeavor will impact society. While we recognize that preserving art and displaying culture must impact sectors of society in some way in order to be considered historical architecture services, the Petitioner has not established how her proposed endeavor would broadly impact society at a level commensurate with national importance.

Whether we view each project individually or view them collectively as indicative of her proposed endeavor plans, the Petitioner does not address the evidentiary deficiencies we identified in our prior decisions. Simply submitting an additional recommendation letter and a portfolio of her work, along with a request to a reconsider our prior decision, does not overcome those deficiencies. 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

The filing before us does not entitle the Petitioner to a reconsideration of the denial of the petition or the dismissal of the subsequent appeal. Rather, a motion to reconsider pertains to our most recent decision. In other words, we examine any new arguments to the extent that they pertain to our prior dismissal of the Petitioner's second combined motion. Therefore, we cannot consider new objections to the earlier denial, and the Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding.

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 provides a copy of the USCIS policy manual covering the employment-based immigrant classification of noncitizens with an advanced degree or exceptional ability, as well as a printout of a January 2022 USCIS news alert concerning national interest waivers for science, technology, engineering, and math (STEM) graduates and entrepreneurs. While we acknowledge these policies, the Petitioner does not specifically assert on motion that our prior decision was based on an incorrect application of law or policy. In addition, the Petitioner does not assert that she is a recent STEM graduate or STEM entrepreneur and therefore, it is not apparent what relevance the news alert has in this matter.

As with the prior motions, 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 prior decision correctly applied Dhanasar, and that it was correct, based on the evidence in the record at the time of the decision. The Petitioner has not shown that our prior decision contained errors of law or policy, or that the decision was incorrect based on the record at the time of that decision. Therefore, the motion does not meet the requirements of a motion to reconsider, and it must 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 Petitioner'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.