U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21965241

Date: JAN. 05, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a business development manager, seeks second preference immigrant classification, 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 and we dismissed the subsequent appeal. The matter is now before us on a combined motion to reopen and reconsider. The Petitioner continues to assert that she is eligible for a national interest waiver. 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 to reopen and reconsider.

I. LAW

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). 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)(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

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). We therefore incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion.

A. Motion to Reconsider

The filing before us does not entitle the Petitioner to a reconsideration of the denial of the petition. 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 appeal. 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.

Our prior decision discussed the proposed endeavor and supporting evidence, including the revenue and job creation projections; executive orders; letters of support, such as from [redacted]; and an advisory opinion from [redacted].[1] The Petitioner asserts on motion that we applied a higher standard of proof than a preponderance of the evidence and failed to examine all the evidence.

On motion, the Petitioner requests a comparison of her evidence to the evidence Dr. Dhanasar presented. The precedent decision, Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016), contains an analytical framework with which to examine national interest waiver cases, but it does mandate or even suggest that a side-by-side comparison of individual petitioners and endeavors is required. Further, it is not apparent how proposed endeavors in vastly different fields could be compared in a one-to-one manner. While we utilize the analytical framework set forth in Dhanasar, the record contains only the Petitioner's evidence, facts, field of endeavor, and explanations, not Dr. Dhanasar's.

The Petitioner argues that cybersecurity issues are the subject of national initiatives and therefore her proposed endeavor has national importance. However, she has not provided a sufficiently direct connection between the proposed endeavor and any national initiatives. For example, while resisting cyberattacks is the subject of national initiatives, the Petitioner has not explained how her specific endeavor within the cybersecurity sales department of an individual company is the subject of national initiatives. To further illustrate, the Petitioner has not suggested that governmental initiatives fund her proposed endeavor or that her employer is named in a particular initiative's announcement and plans. Accordingly, we affirmed the Director's determination that the proposed endeavor has substantial merit but concluded the evidence did not support a finding of the national importance of the proposed endeavor.

On motion, the Petitioner repeatedly relies upon the importance of the cybersecurity field and her individual role within her company to satisfy the national importance element of the first Dhanasar prong. However, as we explained, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." See id. at 889. Throughout her brief on motion, the Petitioner emphasizes her proposed endeavor's impact upon the companies and clients that engage her for products and services. Letters of recommendation and other

[1] When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the Petitioner presents. Guaman-Loja v. Holder, 707 F.3d 119, 123 (1st Cir. 2013) (citing Martinez v. INS, 970 F.2d 973, 976 (1st Cir.1992); see also Kazemzadeh v. U.S. Atty. Gen., 577 F.3d 1341, 1351 (11th Cir. 2009); Casalena v. U.S. INS, 984 F.2d 105, 107 (4th Cir. 1993).

evidence highlight her contributions; successful prior performance; the importance of her role for her company and clients; and the results she achieved on individual projects and sales. Nevertheless, we concluded that the record did not show the Petitioner's proposed endeavor stood to sufficiently extend beyond her employer or its partners and clientele.

As we previously noted, the Director's decision stated that the potential job creation and economic benefits discussed in the economic impact analysis (EIA) involved "several potential and additional factors beyond [the Petitioner's] contributions." We discussed the Petitioner's evidence and determined that it did not sufficiently show the job creation implications of her specific proposed endeavor or that increases in company revenue attributable to her work stood to substantially affect economic activity. We explained that "[w]hile the Petitioner's five-year sales forecast indicates that her future projects for clients have growth potential, it does not demonstrate that the benefits to the regional or national economy resulting from her undertaking would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. at 890." We noted, the "EIA does not outline the methodology the Petitioner utilized in creating her five-year sales forecast." Stated more simply, the Petitioner offered little foundation for the calculation of the figures. She has not sufficiently explained how she will achieve such revenue levels, which would necessarily depend on the number and size of the companies, clients, and projects for which the Petitioner works, among other factors. As the record stands, these projections appear to be little more than aspirations and conjecture.

The Petitioner then provided the revenue projections to an economic analysis consulting organization, which extrapolated them to determine their overall economic impact. The individual creating the EIA stated that he based his conclusions upon documents the Petitioner provided. He offered no independent analysis of how the Petitioner calculated the projections. As the EIA relied upon figures the Petitioner provided, without inquiring into the basis or accuracy of them, the conclusions provided in the EIA offer little support for the actual impact of the proposed endeavor. While the Petitioner may emphasize the importance and value of such evidence, we need not assign weight or credibility to the evidence in the manner advocated by the Petitioner. As we explained, without sufficient information or evidence regarding projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's services would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. Because we question the validity of the EIA's assumptions, we concluded that it did not show how the proposed endeavor's impact would rise to the level of national importance.

Even if we were to accept the revenue and job creation projections as credible, the Petitioner did not demonstrate how the benefits from them accrue to the economy, as opposed to the companies involved in the transactions. The Petitioner requests we assume that benefits will accrue to the U.S. economy on a scale rising to the level of national importance based upon how basic economics functions. However, without more specific and detailed evidence, we affirm our prior conclusion that the Petitioner has not demonstrated how her projects' implications are attributable to her role as a business development manager to an extent that her proposed work holds national importance.

On motion the Petitioner provides conflicting information regarding the job creation implications of her proposed endeavor. While stating that her work "may lead to potential creation of jobs," she also states that from the EIA, "we can say that [the Petitioner] has already created, approximately 473 new

jobs (direct and induced)." Taken together, we cannot discern whether the Petitioner has already created jobs. Although we noted the number of jobs she anticipates her endeavor will create, the Petitioner did not provide sufficient evidence to substantiate her claims. For instance, the Petitioner has not supported her projections with corroborative details, such as the types of jobs she creates, where the jobs are, and whether they are temporary or permanent. The Petitioner must support her assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010).

For the foregoing reasons, the Applicant 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.

B. 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 based on 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 provides evidence concerning the shortage of business development managers, work sample screen shots, Statements of Work and other individual project documents, email exchanges concerning projects, and publications concerning recent cyberattacks and threats. While the Petitioner's work samples and internal involvement on projects support a finding of the importance of her role for her company and clients, this evidence does not sufficiently demonstrate how the Petitioner's proposed endeavor is nationally important. As previously explained, the publications concerning recent cyberattacks and threats reinforce the merit and importance of the industry and profession, but not necessarily the importance of the Petitioner's specific proposed endeavor. Furthermore, workforce shortages and a high demand for business development managers do not support a finding that the Petitioner's proposed endeavor has national importance, as the labor certification process is designed to address these issues.

The evidence provided in support of the motion to reopen does not overcome the grounds underlying our prior decision. Accordingly, the Petitioner has not shown proper cause for reopening the proceedings.

III. CONCLUSION

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

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.