U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23964256

Date: JAN. 26, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, an assistant professor, 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 Texas Service Center denied the petition, concluding that the Petitioner 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, first withdrawing the Director's conclusion that the proposed endeavor would have national importance, then concluding that the record did not satisfy the first two *Dhanasar* prongs, reserving our opinion on the third *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

Later, we dismissed the Petitioner's motion to reconsider, reaffirming our previous determination on appeal that that he had not established eligibility under *Dhanasar's* first prong. The matter is now before us again on a motion to reconsider our most recent decision. With the motion, the Petitioner submits a brief asserting that she is eligible for a national interest waiver. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

I. LAW

A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy; and establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider that does not satisfy these requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

By regulation, the scope of a motion is limited to "the prior decision," which in this case is our decision addressing the Petitioner's first motion to reconsider. 8 C.F.R. § 103.5(a)(1)(i). In our previous decision dismissing the Petitioner's motion we determined the Petitioner's arguments in her motion to reconsider did not show that we erred in concluding that she had not satisfied the "national importance" requirement of *Dhanasar*'s first prong based on our de novo review of the record before us on appeal, or that the dismissal of her appeal was based on an incorrect application of law, regulation, or USCIS policy.

Because the Petitioner did not satisfy the first *Dhanasar* prong on motion, we did not address whether she has satisfied the second and third *Dhanasar* prongs and reserved them. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516,526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). We dismissed the Petitioner's motion as it did not meet the applicable requirements. 8 C.F.R. § 103.5(a)(4). For the sake of brevity, we incorporate our previous analysis of the record and will repeat only certain facts and evidence as necessary to address the Petitioner's assertions in her current motion to reconsider.[1]

The Petitioner asserts on motion that her "opportunity to provide additional evidence was severely limited by the fact that the [Director's] RFE and [d]ecision did not challenge the first [*Dhansasar*] prong. In fact, it was only with the dismissal of the [a]ppeal the AAO challenged the first prong." Notably, when the Petitioner filed her previous motion to reconsider, she did not also file a motion to reopen, which affords an affected party an opportunity to state new relevant facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). That she elected not to do so limited *her own* ability to provide new evidence in support of her assertions.

The Petitioner also proposes on motion that in our previous decision we agreed with and "conceded" her allegations that in our appellate decision we erred by "conflat[ing] her proposed endeavor – the focus of [*Dhanasar's*] first prong – with her proposed employment . . . ." We disagree. In the prior motion the Petitioner asserted that "specific details of [her] employment pursuits or future activities, whether she is employed as an assistant professor, adjunct professor, or international relations researcher" are *irrelevant* to the issue of determining whether the proposed endeavor would have national importance. We discussed in our most recent decision that in determining national importance, the *relevant* question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Contrary to her propositions in the current motion, we did not agree with her stance that the specific details of her employment are *irrelevant* to our analysis of eligibility under *Dhanasar's* first prong in our most recent decision.

In our prior decision, we discussed the evidence regarding her proposed endeavor which she raised in her motion to reconsider, and ultimately concluded that the record did not provide sufficient detail, corroborated by objective evidence, to establish how the proposed research endeavor would have

[1] Our most previous decision in this matter was ID# 21025876 (AAO JUN. 13, 2022).

"national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *See id.* at 889-90. As a result, we dismissed her previous motion to reconsider determining that it did not establish that her proposed endeavor would rise to the level of national importance under the preponderance of evidence standard and that we erred in our appellate decision by withdrawing the Director's conclusion to the contrary. *See id; see also Matter of Chawathe*,

While the Petitioner asks that we reconsider our previous decision, "overturn it, and approve [her] case," she does not identify or discuss the specific documentation that she believes we overlooked or misconstrued in arriving at our conclusions, based on the evidence in the record at that time, nor does she show how we misapplied law, regulation or USCIS policy. 8 C.F.R. § 103.5(a)(3). Accordingly, we will dismiss her motion to reconsider.

We affirm our prior determination that the Petitioner did not sufficiently establish the significance of the teaching activities and prospective research projects she intends to undertake in the United States, and the connection between her prospective endeavor and the alleged broader implications of it. *Matter of Chawathe*, 25 I&N Dec. at 376.

III. CONCLUSION

The Petitioner has not shown proper cause for reconsideration of our prior decision, nor established eligibility for the benefit sought.

ORDER: The motion to reconsider is dismissed.