U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30833647

Date: APR. 22, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner seeks classification as an individual of exceptional ability in the sciences, arts or business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the job offer requirement is in the national interest. We dismissed a subsequent appeal. The matter is now before us on a combined motion to reopen and to reconsider.

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 combined motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

We incorporate by reference our prior analysis in the appeal decision. By way of summation, the Petitioner proposes to establish a bakery in Florida "to introduce to Americans the Brazilian culinary [sic] with special focus on sweets." Although the record focuses on the Petitioner's qualifications and on generalized information regarding food service management and the hospitality industry, it does not establish how the specific endeavor the Petitioner proposes to undertake may have the type of broader implications contemplated by the first *Dhanasar* prong, such as "national or even global implications within a particular field, such as those resulting from certain improved manufacturing

processes or medical advances" or those with "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Matter of Dhanasar*, 26 I&N Dec. 884, 889-90 (AAO 2016). Accordingly, we concluded the record does not establish the proposed endeavor has national importance and we dismissed the appeal. We reserved the issues of whether the record satisfies the second and third *Dhanasar* prongs and whether the Petitioner qualifies for second-preference classification because those issues are unnecessary, given that the record does not establish the Petitioner is eligible for the requested waiver based on the first *Dhanasar* prong. *See id.* at 888-91 for elaboration on the three prongs; *see also INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).

On motion, the Petitioner references information already in the record. The Petitioner submits additional generalized information regarding food service management and the hospitality industry. The Petitioner also submits information regarding the Petitioner's company's social media accounts, a tax return for partnership income, and a recommendation letter written by the owner of [redacted]

We need not address the Petitioner's references to information already in the record on motion to reopen because the scope of review for a motion to reopen is limited to "new facts." 8 C.F.R. § 103.5(a)(2). Although the additional generalized information regarding food service management and the hospitality industry the Petitioner submits on motion to reopen present new facts, they are immaterial to the issue of whether the proposed endeavor may have national importance because they do not address the Petitioner, "the specific endeavor that [she] proposes to undertake," and how the specific endeavor may have the type of broader implications contemplated by the first *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. Therefore, we need not address the generalized information submitted on motion to reopen further. In turn, although the information regarding the Petitioner's company's social media accounts, the tax return, and the recommendation letter submitted on motion present new facts, the Petitioner does not assert—and they do not support the conclusion—that they are material to the first *Dhanasar* prong. Rather, the Petitioner asserts that they relate to the second *Dhanasar* prong—whether an individual is well positioned to advance a proposed endeavor. *See id.* at 888-91. Because the Petitioner does not assert—and the evidence in question does not support a conclusion—that the information regarding the Petitioner's company's social media accounts, the tax return, and the recommendation letter submitted on motion are material to whether the proposed endeavor may have national importance, we need not address them further.

In summation, the Petitioner has not provided a new, probative fact to establish that we erred in dismissing the appeal. Because the Petitioner has not established a new fact that would warrant reopening of the proceeding, the motion to reopen will be dismissed. *See* 8 C.F.R. § 103.5(a)(2), (4).

Next, a motion to reconsider must establish that our prior 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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

Although on motion to reconsider the Petitioner reasserts that she satisfies the *Dhanasar* prongs and that she is eligible for the requested classification, she does not address—nor does she establish—how we may have incorrectly applied a law or policy based on the evidence in the record of proceedings at the time of the prior decision.

We note that, on motion, the Petitioner also requests us to address issues we reserved because they are unnecessary to the outcome of the appeal, given that the Petitioner is otherwise ineligible for the requested waiver. However, the Petitioner does not establish how we may have incorrectly applied a law or policy by reserving issues unnecessary to the outcome of the appeal because of dispositive ineligibility. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

In summation, on motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision; therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(3)-(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.