U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30967627

Date: APR. 29, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner is a special education teacher who seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver (NIW) of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), 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 subsequently dismissed the Petitioner's appeal limiting our review to the dispositive issue of her proposed endeavor's national importance under the first prong of the framework outlines in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. Upon review, we will dismiss the motions.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes within the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

According to the Instructions for Notice of Appeal or Motion (Form I-290B, Notice of Appeal or Motion), any new facts and documentary evidence must demonstrate eligibility for the required immigration benefit at the time the application or petition was filed. 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). A

motion to reopen that does not satisfy the applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

A motion to reconsider must: (1) state the reasons for reconsideration, (2) be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy, and (3) 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

A. Standard of Proof

Within the motions, the Petitioner alleges we failed to apply the proper standard of proof in our appellate decision, but she does not offer any specific instance in which we held her statements or evidence to some standard above the preponderance of the evidence to demonstrate she meets the NIW requirements. Instead, the Petitioner specifically contests our decision indicating she "submitted documentary evidence demonstrating that her role . . . has national implications."

The Petitioner's motion brief offers a lengthy quote of her previous statements relating to her proposed endeavor in addition to quoting from her new statement she offers with the motions. Within her statement she submits with the motions, she offers several examples of how her endeavor aids her students and the local community. Even though she states those benefits extend beyond the immediate school community, she does not support those statements with sufficiently objective and probative evidence. While we respect the Petitioner's efforts and her personal opinion, the final determination of whether her statements and evidence satisfy the national importance requirements rest with USCIS. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988) (finding that the appropriate entity to determine eligibility is USCIS); *see also Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (2012).

As a result, the Petitioner has not shown that we erred in our treatment of her claims or evidence in our appellate decision.

B. Motion to Reopen

A motion to reopen is designed to afford a petitioner an opportunity to submit new facts—facts that existed on the date a petition was filed—and to support those facts with evidence. It is not intended to allow a petitioner to improve upon the previously deficient claims that failed to meet the clearly identified eligibility requirements. And as we noted, on motion a petitioner must still establish eligibility at the time of filing; a petition cannot be approved at a future date after a petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). We generally do not "consider facts that come into being only subsequent to the filing of a petition." *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998) (citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981)). Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey,* 541 F.3d 257, 261 (4th Cir. 2008).

The Petitioner offers a new statement with the motions in which she recounts some of the personal benefits of her job and how it aids individual students and families, discusses her endeavor's scalability and how the tools she has created have broad implications that can extend beyond her immediate school community, and explains the importance of working in her field.

Despite her claim that the inclusive model she developed is scalable with the potential to influence education practices in programs nationwide, she has not illustrated the "potential prospective impact" of her actual proposed work, or how it will impact the special education field more broadly. *See Dhanasar*, 26 I&N Dec. at 889, and 883 respectively. This is similar to the shortcoming of the individual in the *Dhanasar* decision in which we determined his teaching activities did not rise to the level of having national importance because they would not "impact the field of [science, technology, engineering, and math] education more broadly." *Id.* at 893. Neither the Petitioner's new statement, nor the remainder of the record demonstrates that the Petitioner's proposed endeavor will substantially benefit the field of special education, as contemplated by *Dhanasar*: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* The evidence does not suggest that the Petitioner's teaching methods would impact the special education field more broadly.

Nor does the new letter the Petitioner offers from one of her colleagues illustrate how the Petitioner's proposed endeavor will impact the special education field as a whole. The colleague, a fellow special education teacher offers clear support that the Petitioner is doing great work for her community. But she repeatedly moves from discussing the great work the Petitioner is performing in her community, then abruptly transitions to her work effecting the field on a national scale without providing an explanation or connection for that determination. While the Petitioner's tireless dedication, boundless empathy, and extensive experience has an obvious impact to her students, their families, and the local community, that does not necessarily translate into a broader impact in her field.

For the reasons discussed above, the documentation submitted on motion does not overcome our original decision, finding that the Petitioner did not demonstrate her endeavor has national importance.

C. Motion to Reconsider

A motion to reconsider asserts that at the time of the previous decision, we made an error, and the original decision was defective in appraising the facts, the law, or a combination of the two. *Matter of Bay Area Legal Servs., Inc.*, 27 I&N Dec. 837, 844 (BIA 2020) (citing *Matter of O-S-G-*, 24 I&N Dec. 56, 57 (BIA 2006)). A motion to reconsider is based on the existing record and petitioners may not introduce new facts or new evidence relative to their arguments under the motion to reconsider portion of their filing. 8 C.F.R. § 103.5(a)(3); *O-S-G-*, 24 I&N Dec. at 57.

Additionally, a motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings (*Id.* at 58 (citing *Matter of Medrano*, 20 I&N Dec. 216, 220 (BIA 1990, 1991)), and they cannot file a new brief raising additional legal arguments that are unrelated to those issues raised before earlier in the proceedings before our office or before the Director. *Id.* Rather, the "additional legal arguments" that may be raised in a motion to reconsider should flow from new law or a de novo legal determination reached in our previous decision that could not have been addressed by the party. *Id.*

Further, a motion to reconsider is not a process by which a party may submit, in essence, the same brief they presented previously and seek reconsideration by generally alleging error in the prior decision. *Id.* Instead, the moving party must specify the factual and legal issues raised in our most recent decision that were decided in error or overlooked, or they must show how a change in law materially affects the prior decision. *Id.* at 60.

For the Petitioner's motion to reconsider portion of this filing, her brief essentially expresses disagreement with our appellate determination and outlines and reasserts her previous arguments without demonstrating how we improperly adjudicated her appeal or incorrectly applied law or policy.

For instance, the Petitioner bullets several quotes from our appeal dismissal and voices dissent with the conclusions, but she does not indicate what statute, regulation, precedent decision, or USCIS policy we failed to adhere to when making those determinations. Or, she notes our acknowledgment of support letters submitted with her appeal, and again disagrees with our decision. She indicates those letters convey the national importance of her proposed endeavor because they highlight her qualifications, responsibilities, and role in addressing a nationwide shortage of special needs educators. We note that we addressed those claims within our appeal dismissal. Simple disagreements with our conclusions without showing that we erred as a matter of law or pointing to policy that contradicts our analysis of the evidence is not a ground to reconsider our decision. *See O-S-G-*, 24 I&N Dec. at 58.

Next, the Petitioner discusses opinion letters we discussed in our decision and asserts they provided a comprehensive perspective of how her proposed endeavor demonstrates significant positive effects for the United States, but that we improperly dismissed the opinions. While she offers lengthy quotes from the letters, she fails to highlight the specific portions of any letter that we should evaluate within this motion to reconsider that sufficiently aids her claims under *Dhanasar's* first prong. Our appellate decision noted the shortcoming with these letters as placing too heavy focus on the special needs education field and too little on how her proposed endeavor would have broader implications within that field. The Petitioner has not established that we erred as a matter of law or fact pertaining to these opinion letters.

Finally, she alleges we didn't consider how some articles offered context for her proposed endeavor and that we failed to follow the *Dhanasar* precedent decision. As it relates to the articles, simply disagreeing with our determination and stating that they demonstrate the national importance of the Petitioner's proposed endeavor falls short of serving as a proper basis for a motion to reconsider. In addition to claiming the articles demonstrate her eligibility, the Petitioner should offer an explanation of "the how." Otherwise, those claims that are not supported with adequate analysis or other supporting evidence amount to simple assertions, which don't carry any evidentiary value. Unsupported assertions and speculation have no evidentiary value and are insufficient to establish a filing party has satisfied their burden of proof. *See Matter of Mariscal-Hernandez*, 28 I&N Dec. 666, 673 (BIA 2022); *see also Matter of Azrag*, 28 I&N Dec. 784, 787 (BIA 2024).

Turning to her claims that we failed to follow the *Dhanasar* decision, she focuses on her dedicated efforts within her endeavor and relies on the opinion letters in support of her claims; the letters we already explained were inadequate to properly support her eligibility under *Dhanasar's* first prong.

The Petitioner's motion does not meet the applicable requirements of a motion to reconsider because she does not establish that our decision was based on an incorrect application of law or policy. *See* 8 C.F.R. § 103.5(a)(3). In particular, the Petitioner does not cite to any statute, regulation, pertinent precedent decision, binding federal court decision, USCIS policy statement, or other applicable authority and explain our shortcoming based on any of those authorities to establish that the original decision was defective in some regard. As she did not demonstrate that we incorrectly dismissed her appeal, the Petitioner did not establish that she meets the requirements of a motion to reconsider. Therefore, we will dismiss the motion to reconsider.

III. CONCLUSION

The Petitioner has not demonstrated that we should either reopen the proceedings or reconsider our decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.