U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35324807

Date: DEC. 13, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner 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 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 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. The Director also dismissed the Petitioner's subsequent combined motions to reopen and reconsider. We dismissed the Petitioner's appeal. The matter is now before us on combined motions to reopen and 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 motions.

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 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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii).

In our decision dismissing her appeal, we agreed with the Director that the Petitioner did not meet the first prong of the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). We explained that the Petitioner had not provided sufficient information and evidence to demonstrate that her proposed endeavor's prospective impact rises to the level of national importance.[1]

[1] Specifically, the Petitioner did not show that her proposed conciliation and mediation services stand to sufficiently extend beyond her clients to affect the field of alternative dispute resolution more broadly. Nor did the Petitioner establish that

On motion, the Petitioner indicates that she intends to "collaborate with other legal professionals to address legal issues for the Brazilian and American population as legal professional specialist, or will serve as the legal policy consultant to provide valuable support" in areas such as tax reform legislation, intellectual property protection for technology companies, commercial law, public administration and prison system, and alternative dispute resolution. She asserts that our appellate decision erred "in assessing her eligibility based on her company's status rather than evaluating her personal credentials."

We did not dismiss the appeal "based on her company's status" as the Petitioner claims on motion. Rather, our appellate decision explained in detail the reasons why her combined motions before the Director were properly dismissed, including because she did not meet the first prong of the *Dhanasar* framework. *Dhanasar*'s first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Id.* at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* We determined, for example, the record supported the Director's conclusion that the Petitioner had not established her proposed legal services stand to sufficiently extend beyond her clients to affect the field more broadly.

The Petitioner further argues on motion that "her eligibility hinges on her own qualifications, experiences and professional credential in the field of Law." She mentions her law degree, decades of work experience, professional certifications, and attorney licensure. These types of evidence, however, relate to the second *Dhanasar* prong. The second prong shifts the focus from the proposed endeavor to the individual. *Id.* at 890.[2] The Petitioner's motion does not address our specific determinations and conclusions in the appellate decision as they relate to *Dhanasar's* first prong or establish that they were in error.

In addition, the Petitioner points to letters of recommendation from J-C-C-, M-F-A-R-S-, R-C-, J-R-C-, N-M-O-, G-L-, and K-S-O- discussing her legal capabilities and experience. Again, the Petitioner's legal skills, knowledge, and prior work in her field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue on motion is whether the specific endeavor that the Petitioner proposes to undertake has national importance under *Dhanasar's* first prong. She does not explain how our appellate decision erred in analyzing her first prong arguments and evidence.

The Petitioner also requests that we "evaluate the totality of the evidence" and reconsider all her previously submitted documents. The only decision properly before us on motion is our July 2024 appellate decision, and not the Director's earlier decisions. *See* 8 C.F.R. § 103.5(a)(1)(i), which limits the available time to file a motion to reconsider and requires that motions pertain to "the prior decision," which in this case is our appellate decision. The Petitioner has not demonstrated that our decision was based on an incorrect application of law or USCIS policy and that our decision was incorrect based on the evidence in the record at the time of the decision. Additionally, the Petitioner

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the specific endeavor she proposes to undertake has significant potential to employ US workers or otherwise offers substantial positive economic effects for the United States.

[2] To determine whether an individual is well positioned to advance their proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.*

has not offered new evidence or facts on motion to overcome the stated grounds for dismissal in our appellate decision.

The Petitioner has not established new facts relevant to our appellate decision that would warrant reopening of the proceedings, nor has she shown that we erred as a matter of law or USCIS policy. Consequently, we have no basis for reopening or reconsideration of our decision. Accordingly, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and her underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.