U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29504917

Date: JAN. 08, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a general and operations manager, 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 immigrant 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 although the Petitioner established her eligibility for EB-2 classification as an advanced degree professional, she did not demonstrate that a waiver of the job offer requirement would be in the national interest. We dismissed a subsequent appeal. The matter is now before us on motion 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 motion.

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.

In our decision dismissing the Petitioner's appeal, we withdrew the Director's determination that she established her eligibility for EB-2 classification as a member of the professions holding an advanced degree. In doing so, we acknowledged that the Petitioner holds the foreign equivalent of a U.S. bachelor's degree but noted that she did not demonstrate that she has either a United States academic or professional degree or a foreign equivalent degree above that of baccalaureate or at least five years of progressive work experience following completion of her bachelor's degree as required by the definition of "advanced degree" at 8 C.F.R. § 204.5(k)(2). Although the Petitioner documented that she had more than five years of work experience, we emphasized that much of that experience was accrued prior to her completion of a bachelor's degree and therefore could not be counted for purposes of establishing her eligibility for the requested EB-2 classification.

We also addressed the Petitioner's request for a national interest waiver and the Director's adjudication of that request under the three-prong adjudicatory framework established by *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). In doing so, we withdrew the Director's conclusory determination that the Petitioner met the first prong of the *Dhanasar* framework, which requires a petitioner to demonstrate that their proposed endeavor in the United States has both substantial merit and national importance.[1] We provided a multi-page analysis of the Petitioner's evidence and concluded that she did not establish the national importance of her proposed endeavor. We reserved discussion of the remaining two prongs under the *Dhanasar* framework, noting that she could not qualify for a national interest waiver without meeting the first prong.

On motion, the Petitioner asserts that "USCIS did not allow me to produce additional evidence to establish, under the preponderance of the evidence standard, that I am indeed a professional with an advanced degree." She requests that we reconsider our decision with respect to her eligibility for EB-2 classification or provide her with an opportunity to submit additional evidence, noting that the 30-day period provided for filing a motion allowed her insufficient time. She also requests that "according to the previous decision made by USCIS, the Administrative Appeals Office's decision be reconsidered to recognize that my Proposed Endeavor has substantial merit and national importance, according to the evidence provided in the record's petitions, answers, affidavits and reports."

The Petitioner suggests that we erred by dismissing the appeal without first allowing her an opportunity to submit supplemental evidence of her eligibility for EB-2 classification as an advanced degree professional. However, she does not claim that our adverse determination was based on an incorrect application of law or policy or that it was incorrect based on the evidence in the record at the time we issued our decision. Therefore, she has not met the requirements of a motion to reconsider at 8 C.F.R. § 103.5(a)(3). While the Petitioner states she could establish her eligibility for the requested EB-2 immigrant classification if given an opportunity to submit additional evidence, we note that she opted to file a motion to reconsider rather than a motion to reopen, which specifically allows for the submission of new facts supported by documentary evidence. *See* 8 C.F.R. § 103.5(a)(2).

As discussed in our prior decision, although the Petitioner established that she holds the foreign equivalent of a U.S. bachelor's degree, she did not demonstrate that she had either a degree above that of a baccalaureate or the required five years of post-baccalaureate work experience required for this classification when she filed this petition in December 2020. If all required initial evidence for a benefit request is submitted but does not establish eligibility, U.S. Citizenship and Immigration Services (USCIS) may deny the benefit request for ineligibility without requesting additional evidence. 8 C.F.R. § 103.2(8)(iii).

Here, there is no indication that additional evidence could establish the Petitioner's eligibility for classification as an advanced degree professional, as she does not claim that she had five years of post-baccalaureate work experience at the time of filing. Therefore, the Petitioner has not established that

[1] As observed in our previous decision, the Director did not identify or describe the Petitioner's proposed endeavor in the denial decision or discuss or analyze any of the evidence in the record when making a determination that the Petitioner met the first prong of the *Dhanasar* framework. The Director determined that the Petitioner did not satisfy the second or third prongs of the *Dhanasar* framework and denied the petition on that basis.

we erred by withdrawing the Director's determination and dismissing the appeal, in part, based on her ineligibility for EB-2 classification as an advanced degree professional.[2]

Similarly, the Petitioner does not contest our reasons for concluding that she did not establish the national importance of her proposed endeavor under the first prong of the *Dhanasar* framework. Rather, she generally requests that we reconsider our decision and instead defer to the Director's conclusory and unsupported determination that she had met the first prong requirements. However, in adjudicating an appeal, we review the questions presented *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). We are not bound by a service center or district director's decision. *See, e.g., La. Philharmonic Orchestra v. INS*, 248 F.3d 1139 (5th Cir. 2001) (per curiam). The Petitioner's suggestion that we were obligated to defer to the Director's determination is therefore not persuasive.

Based on the foregoing discussion, the Petitioner has not demonstrated that our prior decision to dismiss her appeal was based on an incorrect application of law or policy. Accordingly, she has not shown proper cause for reconsideration of that decision. The motion to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.

[2] In her initial submission, the Petitioner did not claim, in the alternative, that she is eligible for classification as an individual of extraordinary ability in the sciences, arts or business under section 203(b)(2) of the Act.