U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29505329

Date: JAN. 11, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an instructional coordinator, 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). While neither statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions and states that U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion, grant a petition if the petitioner demonstrates that: 1) the proposed endeavor has both substantial merit and national importance; 2) the individual is well-positioned to advance their proposed endeavor; and, 3) on balance, waiving the job offer requirement would benefit the United States.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualifies as an advanced degree professional but that the record 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 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 combined 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). 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).

The Petitioner proposes to create a virtual reality education tool which she refers to as [redacted] In our previous decision dismissing the Petitioner's appeal, incorporated here by reference, we concluded that the record did not establish the national importance of the Petitioner's

proposed endeavor, as required by the first prong of the *Dhanasar* framework. Because this conclusion was dispositive of the appeal, we reserved our opinion as to the remaining *Dhanasar* prongs.

On motion, the Petitioner submits a brief and provides additional copies of documents already in the record. The Petitioner also submits new evidence—sample lesson plans and outlines that she states are representative of those she would create for the product and screenshots of an online student portal. The Petitioner states that the new documents are submitted because we requested them in our appellate decision. The Petitioner appears to be referring to the language in our decision in which we noted that the record contains very little specifics about the proposed product, such as what it will look like, what capabilities it will have, and any details about the hardware, software, or content.[1]

As to the Petitioner's motion to reopen, the Petitioner does not state new facts, supported by documentary evidence, that establish proper cause to reopen the proceedings. *See* 8 C.F.R. § 103.5(a)(1)(i); (a)(2). Although the lesson plans, outlines, and screenshots are newly submitted evidence, we conclude that they do not establish that we erred as to our reason for dismissing the Petitioner's appeal—the lack of national importance of the proposed endeavor. *See Matter of Coelho*, 20 I&N Dec. at 473 (requiring that new evidence have the potential to change the outcome).

The lesson plans and outlines, aimed at kindergarten students, describe children using virtual reality glasses to hear a song, watch a video, and see pictures. But this is not probative, credible evidence that helps show that the use of this product has the potential to have a broad impact on education. For example, the Petitioner has not demonstrated, and the record does not establish, that using virtual reality glasses to hear a song, watch a video, or see a picture will improve educational outcomes relative to other ways of accessing course material. These lesson plans do not provide support for the claims—which we concluded in our appellate decision were unsubstantiated—that the proposed [redacted] product will be "unique and innovative," that it will be "cost-effective, exciting for learners, easy to use, and productive for the educators," and that it will "benefit the U.S. at a national level by making U.S. education more effective and affordable." As to the screenshots, the Petitioner states that this is a student portal which she helped develop in a previous position for an English-language acquisition school. Therefore, they relate to a different educational program and do not establish any relevant facts related to the proposed [redacted] project and its potential prospective impact. As such, we conclude that the Petitioner does not state new facts, supported by documentary evidence, that establish the national importance of the proposed endeavor, and therefore cause to reopen the proceedings.

As to the Petitioner's motion to reconsider, the Petitioner contests the correctness of our prior decision. The Petitioner states that the evidence in the record was not considered in its entirety and that some of the evidence was misunderstood and misinterpreted. But the Petitioner does not identify the specific evidence that she contends was overlooked or misinterpreted in support of this claim. Instead, the Petitioner copies and resubmits large sections of text from her initial filing, the response to the request for evidence (RFE), and appeal brief. The Petitioner states that she "would like to draw [our] attention to" some of these prior statements but does not explain how those statements demonstrate error in the

[1] We concluded that this lack of detail hindered our ability to evaluate the Petitioner's claims about the product's potential to have a broad impact on the field of education or the use of virtual reality in schools.

appellate decision. Among the claims the Petitioner restates are the claim that the endeavor is nationally important because she hopes to introduce the project into more than one school and the numbered list of 12 assertions that the Petitioner characterizes as "proving" the endeavor's importance but that we determined were unsupported by probative, credible evidence. The Petitioner also repeats the claim that her letters of recommendation include a letter from the U.S. Department of Education, although this is not established by the record.[2]

The Petitioner does attempt to respond to several points made in our appellate decision. But these attempts do not establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect. 8 C.F.R. § 103.5(a)(3). For example, the Petitioner contends that she has sufficiently documented the interest of potential investors in the project, however she does not rebut or overcome our conclusion that they have not yet provided any money nor that they have provided only nonbinding statements of intent. The Petitioner also asserts that we concluded that she did not submit a business plan, when in fact she has submitted a business plan. Additionally, she contends that she "described the IT plan for hardware and software to be used for the project on a business model." But our decision did not state that she provided no business plan, and we acknowledge that the record does contain a business plan. We did note, however, that the Petitioner provided little specifics about the product she intends to create, including specifics about any of the software or hardware, and while the Petitioner may claim on motion that she has sufficiently described the hardware and software, we disagree. Indeed, the business plan states that the product has not yet been created, and that "[w]hile IT specialists work on developing [redacted] software and hardware, educators will be working on developing the content of the courses offered." As such, we conclude that the Petitioner has not established that our decision was incorrect.[3]

Finally, the Petitioner also reiterates her claims regarding the Director's findings and her eligibility as to the second and third *Dhanasar* prongs. But because our conclusion that the Petitioner did not establish the endeavor's national importance was dispositive of the Petitioner's appeal, we declined to reach a conclusion as to the remaining *Dhanasar* prongs. As stated above, our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). To succeed on motion, the Petitioner must first establish a basis to reopen or reconsider our decision as to the national importance of the proposed endeavor. 8 C.F.R. § 103.5(a)(1)(i), (a)(3). Because the Petitioner has not done so,

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[2] The record does contain a letter from an individual claiming to be a "performance management executive" with the [redacted]. The letter writer claims that integrating technology into education is important and states that the [redacted] project will be "a big leap to transformation (sic) in the history of teaching" and that the project "accumulates and applies the newest achievements in the neuroscience, cognitive psychology, pedagogy (sic) to ensure the derivation of significant outcomes." However, the letter is unsigned, undated, lacks details about the letter writer's qualifications as an expert on this topic, and does not explain the letter writer's familiarity with the project. We conclude that the letter is therefore not probative, credible, or persuasive.

[3] Additionally, the Petitioner attempts to address the fact, noted in our decision, that the company that the Petitioner founded, owns, and will use to pursue her proposed endeavor was initially characterized as a prior employer owned by another individual. On motion, the Petitioner simply states that this individual was previously the chief executive officer of the company. However, the Petitioner does not acknowledge or explain why, in the initial filing, she mischaracterized her relationship to the company. Regardless, the history and ownership of this company were not the basis for the dismissal of the appeal, and the Petitioner's attempted explanation does not establish that we incorrectly applied any law or policy in our decision.

we need not consider the Petitioner's claims as to the Director's findings and her eligibility under the second and third *Dhanasar* prongs.[4]

The Petitioner may disagree with our decision, but she has not established that we incorrectly applied any law or policy or that our decision was incorrect based on evidence in the record at the time of the decision, as required by 8 C.F.R. § 103.5(a)(3). The Petitioner's motion to reconsider largely quotes and recycles the same arguments previously presented; where the motion presents new claims, they do not establish error in our decision.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. 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 motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[4] Had the Petitioner's combined motions established cause to reopen or reconsider our appeal decision and established her eligibility under the first *Dhanasar* prong, we would then consider the Petitioner's claims as to the Director's errors and her eligibility under the remaining *Dhanasar* prongs, as those have arguments not yet been considered on appeal. But because the Petitioner's combined motions have not overcome the basis for our dismissal of her appeal or established her eligibility as to prong one, this is unnecessary. *See 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).