U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29698885

Date: JAN. 29, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a pediatrician who intends to work in the United States as a registered nurse, 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 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the Petitioner's subsequent appeal. The matter is now before us on combined motions to reopen and reconsider. 8 C.F.R. § 103.5.

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). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, "new facts" are facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

A motion to reconsider must establish that our 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 do not consider new facts or evidence in a motion to reconsider.

In requesting a national interest waiver of the job offer requirement, a petitioner must establish that they merit a discretionary waiver of the requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the 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. *Matter of Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

In our appellate decision, we determined that the Petitioner's proposed endeavor has substantial merit. However, we concluded that the Petitioner did not establish that her proposed endeavor has national importance under the first prong of the *Dhanasar* analysis. Because the documentation in the record did not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner had not demonstrated eligibility for a national interest waiver. We concluded that further analysis of her eligibility under the second and third prongs outlined in *Dhanasar* would serve no meaningful purpose.[2]

In her brief on motion the Petitioner states that, following the filing of her appeal, she filed a new Form I-140, again requesting a national interest waiver of the job offer requirement. That application was subsequently approved on May 5, 2023, although we dismissed her appeal on July 7, 2023. The Petitioner asserts that the approval of a subsequent petition is a material fact that demonstrates that she "meets all legal requirements of a national interest waiver" and that our dismissal of her appeal is "conflicting and antagonistic."

The Petitioner's assertion that USCIS has approved another petition based on similar facts is unpersuasive. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). Furthermore, we are not bound to follow a contradictory decision of a service center. *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000). Therefore, we do not consider the approval of the Petitioner's later filed petition to be a material fact that warrants reopening the current proceedings.

On motion the Petitioner submits a brief and references evidence already in the record. The deficiencies in the already submitted evidence have been identified and discussed in our prior decision. The Petitioner's brief on motion does not overcome those deficiencies and does not establish that her proposed endeavor has national importance. Therefore, the Petitioner has not stated new facts supported by documentary evidence that warrant reopening our prior decision.

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[2] We declined to reach but hereby reserved remaining arguments concerning eligibility under the second and third *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *see also 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).

Although the Petitioner indicated on Form I-290B, Notice of Appeal or Motion, that she was filing a combined motion to reopen and motion to reconsider, her brief only addresses her eligibility for a motion to reopen based on new facts, specifically the approval of a subsequent petition. The Petitioner does not assert that our previous appeal decision was based on an incorrect application of law and/or policy. Nor does the Petitioner identify specific errors or explain how our prior appeal decision did not follow the regulations and policy guidance. Upon review, we do not find any error or incorrect application of law or policy. The Petitioner has not met the requirements of a motion to reconsider.

For the reasons discussed above, the Petitioner has not shown proper cause for reopening the proceedings or reconsideration of our prior decision. Therefore, the Petitioner has not established eligibility for the benefit sought.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.