U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32081263

Date: JULY 15, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a tax specialist, seeks employment-based second preference (EB-2) immigrant classification, 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 Acting Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed a subsequent appeal. The matter is now before us on a combined motion to reopen and 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 combined motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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).

We incorporate by reference our prior analysis in the appeal decision. By way of summation, the Petitioner established that she works as an accounting manager and she proposes to establish her own financial consulting company, headquartered in Massachusetts, intending to employ 20 workers within the first five years of operation. We concurred with the Director's conclusion that the record does not establish how the proposed endeavor may have national importance, as contemplated by *Matter of Dhanasar*, 26 I&N Dec. 884, 889-90 (AAO 2016), for the reasons explained in our prior decision.

On motion, the Petitioner submits a brief in support of the combined motion, and a copy of our prior decision. However, the Petitioner does not submit a new fact supported by documentary evidence, as required by the regulation at 8 C.F.R. § 103.5(a)(2). Because the Petitioner has not provided a new

fact to establish that we erred in dismissing the appeal, the motion to reopen will be dismissed. *See* 8 C.F.R. § 103.5(a)(2), (4).

Next, 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.

On motion to reconsider, the Petitioner contests the correctness of our prior decision. However, the only law or policy that the Petitioner references on motion—other than the regulation that describes motions, 8 C.F.R. § 103.5—is "the Fifth Amendment of the Constitution of the United States of America," which the Petitioner asserts "the Service" generally violated by "not properly analyz[ing]" the record. The Petitioner does not specify whether, by "the Service," she refers to the Director's decision or our prior decision; however, we note that the scope of our review is limited to our latest decision. *Id.* Therefore, the Director's decision is beyond the scope of this motion to reconsider.

The Fifth Amendment of the U.S. Constitution provides the following:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. V.

The Petitioner's reference to the Fifth Amendment is rather imprecise. She does not clarify what aspect of the Fifth Amendment she believes we may have violated by explaining, as we did in our prior decision, why the record does not establish how the proposed endeavor may have national importance, as required by the first *Dhanasar* prong. Neither the immigration benefit request submitted by the Petitioner, nor the appeal she filed, nor our prior decision implicate "a capital, or otherwise infamous crime," contemplated by the Fifth Amendment. In turn, neither the immigration benefit request, nor the appeal, nor our prior decision put the Petitioner in jeopardy of life or limb, let alone twice, as contemplated by the Fifth Amendment. Likewise, the immigration benefit request is neither a criminal case, nor does it compel the Petitioner to be a witness against herself or deprived her of life, liberty, or property in such a case, as contemplated by the Fifth Amendment. Similarly, the Petitioner does not explain how her immigration benefit request, her appeal, or our prior decision may have taken private property for public use, as contemplated by the Fifth Amendment.

Because the Petitioner has not established that our previous decision was based on an incorrect application of a relevant law or policy at the time we issued our decision, the motion to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(3)-(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.