U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35036522

Date: NOV. 22, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a registered nurse who intends to operate a home health care business, seeks employment-based second preference (EB-2) 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 Texas Service Center Director denied the petition, concluding that, although the Petitioner qualifies for the EB-2 classification as an advanced degree professional, the record did not establish that a waiver of the job offer requirement is in the national interest. We dismissed the 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 to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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). *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). 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.

It is important to note that our review on motion is limited to reviewing our latest decision, which is the July 2024 dismissal of the Petitioner's appeal and not the Director's November 2023 decision. 8 C.F.R. § 103.5(a)(l)(ii).

In dismissing the appeal, we agreed with the Director that the Petitioner's proposed endeavor did not satisfy the national importance element under the first prong of the *Dhanasar* framework. *Matter of Dhanasar*, 26 I&N Dec. 889 (AAO 2016). Specifically, we explained that the evidence of record, including her business plan, letters of recommendation, and opinion letter from a professor, did not

show that her proposed endeavor to establish and operate a home health care business stands to sufficiently extend beyond her potential patients or clients, to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance.

On motion, the Petitioner generally disagrees with the Director's decision, contending that it "overlooked critical aspects of [the] endeavor, which directly addresses the national demand for home health care services, particularly in light of the aging population in the United States." In support of the motion to reopen, the Petitioner provides evidence previously submitted, as well as a new letter of support from her employer, a physician in Florida. Regarding the letter, like those previously submitted, it praises the Petitioner's knowledge and ability in the field of health care, which as explained in the Director's denial and in our appeal dismissal, are factors considered under the second prong of the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&N Dec. at 890. At issue is whether the Petitioner has demonstrated the national importance of her proposed endeavor to establish and operate a home health care business in the United States, the first prong of the *Matter of Dhanasar* framework. *Id.*, 26 I&N Dec. at 889-90. This letter does not establish the national importance of the proposed endeavor.

The Petitioner further asserts her "proposed endeavor will significantly influence public health outcomes, reduce hospital readmissions, and lower overall healthcare costs" and that the endeavor will be "contributing directly to the national economy by creating jobs and reducing healthcare expenditures." In support of her assertions, the Petitioner improperly relies on *Matter of New York State Department of Transportation (NYSDOT)*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), which was vacated by our precedent decision *Matter of Dhanasar.*[1] More importantly, and as discussed in our dismissal of the appeal, the Petitioner has not provided corroborating evidence to support these claims of her business' substantial economic benefits to the United States.

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.

[1] While we acknowledge that the Petitioner also cites to "*Matter of Poursina*, 25 I&N Dec. 867 (BIA 2012)," stating that "the BIA recognized the national importance of endeavors addressing public health needs, even if the impact was initially localized," we were unable to find this decision and the Petitioner did not provide a copy. We note, for example, that 25 I&N Dec. 867 (BIA 2012) corresponds to *Matter of Valenzuela* which addresses individuals admitted to the United States in K-4 nonimmigrant status. As we are unable to locate the referenced decision, we will not address it further.