U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35650320

Date: JAN. 16, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur in early childhood education, 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. 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 the Petitioner did not establish eligibility for a national interest waiver. We dismissed a subsequent appeal. The matter is now before us on a combined motion 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 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).

In the present case, the Petitioner's stated endeavor is to establish an educational services firm that provides Christian education, headquartered in Massachusetts. In our appeal decision, we concurred with the Director's determination that the Petitioner did not establish that her proposed endeavor has national importance, the first requisite prong of the analytical framework for adjudicating national interest waiver petitions set forth in Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).[1] In addition, we concluded that the Petitioner had not established eligibility for EB-2 classification as a member of the professions with an advanced degree because she did not establish that her degree is the foreign

[1] Dhanasar states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen is well positioned to advance the proposed endeavor, and (3) that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

equivalent of a U.S. bachelor's degree or that she has five years of progressive experience in the specialty as required by 8 C.F.R. § 204.5(k)(2).

On motion, the Petitioner submits a brief and asserts that we erred in determining that she had not established eligibility for EB-2 classification as a member of the professions with an advanced degree. However, even assuming arguendo that the Petitioner's evidence submitted on motion contains sufficient detail to establish her eligibility for EB-2 classification, with respect to meeting the first prong of the Dhanasar framework – with each prong being an independent ground of eligibility for the EB-2 classification – the Petitioner does not provide any new evidence or arguments which overcome our prior determination.

As the Petitioner's arguments on motion do not directly address the deficiencies identified in our prior decision regarding the national importance of her endeavor, the Petitioner has not established that our prior decision was based on an incorrect application of law or policy as required for a motion to reconsider. 8 C.F.R. § 103.5(a)(3). In addition, the Petitioner has not established new facts relevant to our appellate decision that would warrant reopening of the proceedings. Accordingly, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and her underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.