U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20503275

Date: MAR. 25 2022

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a youth minister, 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).

The 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, concluding that the Petitioner had not established that the proposed endeavor has national importance, reserving other eligibility criteria issues. The matter is before us again on a combined motion to reopen and a motion to reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the combined motion.

I. LAW

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 application. 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.

II. ANALYSIS

As noted above, although we found that the proposed endeavor has substantial merit, we found that the record did not establish that the proposed endeavor has national importance, as required by the first prong of *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] On combined motion, the Petitioner asserts that her "activities will be of national importance and will undoubtedly reach all parts of the United States." We address the combined motion separately below.

A. Motion to Reopen

New evidence in support of the motion to reopen includes the following: (1) a one-page letter from the senior pastor of the [redacted] Church of Christ; (2) a one-page letter from the senior pastor of [redacted]; (3) a one-page letter from the coordinator of [redacted]; and (4) a personal statement from the Petitioner dated October 2021.

None of the new evidence presents new facts that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding. The letters from the respective organizations largely consist of language that is identical to language in letters already in the record, including letters submitted in support of the appeal. Because the letters reassert, verbatim, information already in the record, they do not present new facts. *See* 8 C.F.R. § 103.5(a)(2). Moreover, the letters and the Petitioner's new personal statement address the Petitioner's recent activities, occurring after the petition filing date in 2018. A petitioner must establish eligibility at the time of filing a visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Therefore, even if the letters presented new facts, to the extent that they address the Petitioner's activities after the petition filing date, they could not establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. at 49.

Because the evidence submitted in support of the motion to reopen does not present new facts that establish eligibility at the time of filing, we will dismiss the motion to reopen. *See* 8 C.F.R. § 103.5(a)(2), (a)(4); *see also* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. at 49.

B. Motion to Reconsider

Turning to the motion to reconsider, the Petitioner does not identify a law or policy that we may have incorrectly applied in the underlying motion. *See* 8 C.F.R. § 103.5(a)(3). Instead, the Petitioner discusses only her endeavor and the letters addressed above.

The Petitioner has not established on motion that we misapplied a law or policy and that our decision was incorrect based on the evidence in the record of proceedings at the time of the decision; therefore, we will dismiss the motion to reconsider. *Id.*

Because the Petitioner has not satisfied the first *Dhanasar* prong on motion, we need not address whether she has satisfied the second and third *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S.

[1] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on the three prongs.

24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.