U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24058850

Date: APR. 05, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, an avionics engineer, 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 Texas 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.

By regulation, the scope of a motion is limited to the "prior decision." 8 C.F.R. § 103.5(a)(1)(i). Therefore, the filing before us is not amotion to reopen and reconsider the denial of the petition. Instead, it is a motion to reopen and reconsider our most recent decision, the dismissal of the

Petitioner's appeal. Accordingly, we examine any new facts and arguments to the extent that they pertain to our prior dismissal of the Petitioner's appeal.

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 third prong outlined in *Dhanasar* would serve no meaningful purpose.[2]

In her brief on motion the Petitioner states that "the documents listed by the Service in the denial letter are proof that the Petitioner has presented all the necessary documents along with the filing and RFE response." The Petitioner also states that the Director "ignored the recent updated guidance issued by USCIS regarding professionals in the STEM areas."[3]

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.[4] 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.

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[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).

[3] On January 21, 2022, USCIS issued a policy alert updating guidance in the USCIS Policy Manual to address requests for national interest waivers for advanced degree professionals or persons of exceptional ability. The guidance clarified how the national interest waiver can be used by science, technology, engineering, and mathematics (STEM) graduates and entrepreneurs. *See* 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

[4] We note that much of this evidence is dated between 2013 and 2018 and was submitted with the initial filing. The Petitioner did not supplement the record with new and more current evidence on appeal or in its combined motions.

The Petitioner asserts that our previous appeal decision was based on an incorrect application of law and/or policy. However, the Petitioner does not identify specific errors or explain how our prior appeal decision did not follow the regulations and policy guidance. The Petitioner's appeal was filed in September 2021, prior to an update to the USCIS Policy Manual in January 2022 regarding STEM professions. However, the Petitioner does not specifically explain what evidentiary considerations discussed in the policy guidance were overlooked in our appeal decision. Nor does the Petitioner submit new or more current evidence with its motions. 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.

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). Here, that burden has not been met.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.