U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28311277

Date: AUG. 23, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a banker, seeks classification as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.[1]

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner qualifies as an advanced degree professional, the Petitioner did not establish that a waiver of the job offer requirement is in the national interest. We dismissed a subsequent appeal. The matter is now before us on combined motions 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). 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). However, the Petitioner does not submit documentary evidence in support of the motion and does not state new facts to establish eligibility.

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

[1] While neither 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 and states that USCIS may, as a matter of discretion, grant a petition 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.

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.

In our prior decision, incorporated by reference here, we determined that the Petitioner did not provide sufficient detail regarding her proposed endeavor to establish either its substantial merit or its national importance. We noted that although the Petitioner discussed broad activities that she could pursue in her field, such as bringing foreign investment to the United States or providing financial planning advice, she did not describe a specific endeavor that could be evaluated under the first prong. Similarly, we noted that although the Petitioner made several claims as to the potential impact of her work, without sufficient details regarding the proposed endeavor, the record did not support a link between her work and these positive outcomes. We further determined that the Petitioner did not establish that she is well-positioned to advance the proposed endeavor. We dismissed the appeal because we concluded that the Petitioner had not established eligibility under either the first or second prongs of the *Dhanasar* framework, as required.

On motion, the Petitioner submits a brief statement in which she broadly asserts that USCIS did not "give due regard" to the evidence in the record. The Petitioner states that the Director's denial was therefore "contrary to law or policy, and unsupported by the evidence of record." However, the Petitioner makes only this general assertion in a conclusive manner that the denial was improper, without identifying any specific law or policy that was incorrectly applied to any specific evidence in the record.[2] Moreover, the only decision properly before us on motion is our February 2023 appellate decision, not the Director's May 2022 denial of the petition. The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). But the Petitioner does not discuss our decision to dismiss her appeal, nor identify any incorrect application of law or policy in that decision, nor specify how we erred in dismissing her appeal based on the evidence before us at the time of the decision. 8 C.F.R. § 103.5(a)(3).

On motion to reopen, as stated above, the Petitioner does not state any new facts and does not submit any documentary evidence, as required by 8 C.F.R. § 103.5(a)(2). 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, as required by 8 C.F.R. § 103.5(a)(3). A motion that does not satisfy the applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4). Therefore, the combined motions will be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[2] The only specific law or policy cited by the Petitioner on motion is her claim that the Director did not properly analyze the documents in the record, thus "violating the Fourth Amendment of the Constitution of the United States of America as Petitioner provided timely and proper notice of her RFE response to USCIS." The Fourth Amendment to the United States Constitution prohibits "unreasonable searches and seizures" and requires probable cause in the issuance of warrants. U.S. Const. amend. IV. The Petitioner does not explain how the Fourth Amendment is implicated in the instant matter nor how the Director violated it with the denial of the petition.