U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29320013

Date: DEC. 18, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, an interior design entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or an individual of exceptional ability, 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 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. The Petitioner later filed an appeal that we dismissed. 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.

In our decision dismissing the Petitioner's appeal, we determined the Petitioner did not demonstrate that the potential prospective impact of her proposed endeavor rose to the level of national importance.[1] We indicated the submitted evidence did not reflect that the Petitioner's proposed endeavor would extend beyond her company and clientele to impact her field more broadly. In addition, we concluded the provided evidence did not establish that the Petitioner's proposed endeavor would have significant potential to employ U.S. workers or have substantial positive economic effects on the United States. We further stated that since the Petitioner did not demonstrate the national importance of the Petitioner's proposed endeavor, and since this was dispositive of the appeal, that we

[1] In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id*. We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id*. at 890. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of her work.

declined to reach and reserved her appellate contentions with respect to the second and third prongs outlined in *Dhanasar*.[2]

On motion, the Petitioner requests that we "reconsider the adverse decision and reopen [the] Petitioner's Form I-140." The Petitioner asserts that U.S. Citizenship and Immigration Services (USCIS) "did not give due regard to all the pieces of the evidence." The Petitioner contends that "the documents listed by [USCIS] are proof that the Petitioner has presented all the necessary documents along with the filing and [request for evidence] response, but those documents were not properly analyzed by [USCIS], violating the Fourth Amendment of the Constitution."

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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). Here, the Petitioner submits no new facts or documentary evidence in support of the motion to reopen. For this reason, the motion to reopen must be dismissed.

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.

As noted, our review of the motion is limited to reviewing our most recent decision. However, the Petitioner only discusses the Director's prior decision and not our most recent appeal decision, which upon review, carefully listed and considered the evidence submitted. The Petitioner has not sufficiently articulated on motion what evidence we did not consider in making our prior decision and she does not specifically indicate how we incorrectly applied law or policy to the record of proceeding at the time of our decision. Further, the Petitioner vaguely asserts that USCIS somehow violated her Fourth Amendment constitutional rights in denying the petition. However, again, the Petitioner does not discuss how USCIS violated her Fourth Amendment constitutional rights, and this assertion is particularly ambiguous, since this amendment deals with protecting U.S. citizens from unreasonable searches and seizures by the government. The Petitioner has not established that our prior decision was based on an incorrect application of law or policy based on the evidence in the record of proceedings at the time of our decision. 8 C.F.R. § 103.5(a)(3). As such, the motion to reconsider must be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

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[2] *See INS v. Bagamasbad*, 429 U.S. 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).