U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29505222

Date: DEC. 29, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a supply chain specialist, 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). 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: 1) the proposed endeavor has both substantial merit and national importance; 2) the individual is well-positioned to advance their proposed endeavor; and, 3) on balance, waiving the job offer requirement would benefit the United States.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish either qualification for the EB-2 classification or that a waiver of the job offer requirement is in the national interest. We dismissed a subsequent appeal, withdrawing the Director's finding as to the Petitioner's eligibility for the EB-2 classification and concluding that this requirement was established, but agreeing with the Director that the Petitioner did not demonstrate eligibility for a waiver of the job offer requirement. 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). 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 our previous decision dismissing the Petitioner's appeal, incorporated here by reference, we concluded that the record did not establish the national importance of the Petitioner's proposed endeavor, as required by the first prong of the *Dhanasar* framework.

On motion to reopen, the Petitioner submits a new professional plan for her proposed endeavor of operating a consulting business related to supply chain management. The Petitioner asserts that the amended plan addresses the deficiencies noted in our decision to dismiss the appeal. Specifically, the Petitioner has amended the professional plan to include the claim that the business will create up to 15 jobs and to add further details about potential salaries and employee benefits, pricing for the business's services, and the basis for the price structure. The Petitioner claims that these changes to the professional plan demonstrate that the proposed endeavor will produce substantial positive economic effects, and therefore overcome our finding that the Petitioner did not establish the national importance of the proposed endeavor. The Petitioner also restates claims previously made about the importance of supply chain management and the potential for the Petitioner's advisory services to help clients achieve more efficiency and profitability in their businesses.

However, we conclude that the new professional plan does not establish the national importance of the proposed endeavor. Although the Petitioner has added a potential job creation estimate—which we noted in our appellate decision was missing from the plan—this addition and the accompanying salary and benefit information are not sufficient on their own to establish the endeavor's national importance. The Petitioner must still demonstrate that the job creation has the potential to result in a broad impact commensurate with national importance. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. But the Petitioner has not done so here. Although the Petitioner asserts that the creation of 15 jobs and the payment of salaries demonstrates the significant economic impact of the proposed endeavor, the Petitioner must support her assertions her relevant, probative, and credible evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

Additionally, we conclude that the new price structure information and explanation are more appropriate considerations for the second *Dhanasar* prong, which shifts the focus from the proposed endeavor to whether the noncitizen is well-positioned to advance it, including the credibility of their "model or plan for future activities." *Matter of Dhanasar*, 26 I&N Dec. at 890. While the pricing information could add credibility to the Petitioner's plan, it does not help to demonstrate the potential prospective impact of the endeavor and therefore does not help establish the endeavor's national importance.

Finally, although we have considered the merits of the Petitioner's new plan, we note that, in general, material changes made after the filing of a petition need not be considered. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). In *Matter of Izummi*, the petitioner submitted numerous revisions to a partnership agreement following the director's denial, some of which were made specifically to address the "objected-to" provisions and were intended to "render the instant petition approvable." *Id.* at 175. We concluded that those amendments would not be considered in adjudicating the petition, because "a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service

requirements." *Id.* at 375-76. Similarly, here, we conclude that the Petitioner's continued revisions of her professional plan amount to an attempt to correct a deficient petition after filing.[1]

As to the Petitioner's motion to reconsider, the Petitioner does not claim that our decision to dismiss the appeal was based on an incorrect application of law or policy and 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). Instead, the Petitioner only contests the correctness of the Director's prior decision regarding the second *Dhanasar* prong and restates similar claims previously made regarding the third *Dhanasar* prong. But because our conclusion that the Petitioner did not establish eligibility as to national importance was dispositive of the Petitioner's appeal, we declined to reach a conclusion as to prongs two and three. As stated above, our review on motion is limited to reviewing our latest decision. 8 C.F.R § 103.5(a)(1)(ii). To succeed on motion, the Petitioner must first establish that our dismissal of the appeal was based on an incorrectly applied law or policy, which she has not done. 8 C.F.R. § 103.5(a)(1)(i), (a)(3). The Petitioner has not met the regulatory requirements of a motion to reconsider, and we will not consider the Petitioner's claims as to the Director's findings and her eligibility regarding the second and third *Dhanasar* prongs.[2]

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, the Petitioner has not met the regulatory requirements to establish that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

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[1] As the record shows, the Director excluded the original professional plan from consideration entirely, citing to *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971), and finding that the plan, having been created after the filing of the petition, did not establish the Petitioner's eligibility at the time of filing. On appeal, the Petitioner contended that *Matter of Katigbak* was inapplicable because the creation of the professional plan did not change the nature of the proposed endeavor, but simply provided more details about the same proposed endeavor that was initially described. We accepted this contention on appeal and considered the merits of the professional plan. Nevertheless, the Petitioner's further amendments at this point—even if they do not change the nature of the proposed endeavor—were made specifically to address the deficiencies in the prior plan and fall within the type of material changes contemplated by *Matter of Izummi*. 22 I&N Dec. at 376.

[2] Had the Petitioner's combined motions established cause to reopen or reconsider our decision and established her eligibility under the first *Dhanasar* prong, we would then consider the Petitioner's claims as to the Director's errors and her eligibility under the remaining *Dhanasar* prongs, as those have arguments not yet been considered on appeal. But because the Petitioner's combined motions have not overcome the basis for our dismissal of her appeal or established her eligibility as to prong one, this is unnecessary.