U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30867437

Date: APRIL 29, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a registered nurse/healthcare entrepreneur, seeks classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. *See* 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, 8 U.S.C. § 1153(b)(2)(B)(i). 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.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she 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. 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 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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy the aforementioned requirements and demonstrate eligibility for the requested benefit.

The record shows that the Petitioner's proposed endeavor is to operate a healthcare consulting and education business in Florida. The Petitioner seeks to provide medical consultations to U.S. healthcare institutions and train and coach nursing students.

In our decision dismissing the Petitioner's appeal, we agreed with the Director that the Petitioner did not meet the first prong of the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). We explained that the Petitioner had not shown that her proposed endeavor sufficiently extends beyond her healthcare company to impact the healthcare industry or the field more broadly at a level commensurate with national importance. In addition, we stated that the Petitioner had not demonstrated that her revenue projections and potential business activity, even if credible, would provide a significant economic benefit to the United States, Florida, or any economically depressed regions such that it would rise to the level of national importance.

On motion, the Petitioner does not state any new facts and does not submit any new documentary evidence. Therefore, the motion does not meet the requirements of a motion to reopen and must be dismissed.

Rather, the Petitioner contests the correctness of the Director's decision, stating that the Director did not consider all the evidence that the Petitioner had submitted with the petition and, later, in response to a request for evidence. The Petitioner asserts that "those documents were not properly analyzed by the Service, violating the Fourth Amendment of the Constitution of the United States of America." The Petitioner asks that we "reconsider the adverse decision and reopen [the petition] and give full consideration on all the submitted documents."

The only decision properly before us on motion is our September 29, 2023, appellate decision, not the Director's April 10, 2023, denial. *See* 8 C.F.R. § 103.5(a)(1)(i), which limits the available time to file a motion to reconsider and requires that motions pertain to "the prior decision," which, again, is our September 29, 2023, appellate decision.

Nor does the Petitioner's submission meet the requirements of a motion to reconsider. The Petitioner's motion does not address our specific determinations or establish that they were in error. Instead, as with the motion to reopen, the Petitioner makes general assertions that the Director disregarded unspecified evidence. But again, the Director's decision is not the one before us today. The Petitioner has not demonstrated that our appellate decision was based on an incorrect application of law or USCIS policy and that our decision was incorrect based on the evidence in the record at the time of the decision.

The Petitioner has not established new facts relevant to our appellate decision that would warrant reopening of the proceedings, nor has she shown that we erred as a matter of law or USCIS policy. Consequently, we have no basis for reopening or reconsideration of our decision. Accordingly, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and her underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.