U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28999317

Date: NOV. 17, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, an insurance sales manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirements attached to this EB-2 classification. Immigrant 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 had not established eligibility for the underlying immigrant classification and 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 a combined motion to reopen and 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). Upon review, we will dismiss the combined motion.

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).

Despite indicating on the Form I-290B, Notice of Appeal or Motion, that the submission is a combined motion to reopen and motion to dismiss, and despite furthermore referring to the submission as a "motion to reopen and reconsider" multiple times in the supporting brief, the Petitioner does not state a new fact on motion to reopen, nor does she support such a fact with documentary evidence. Instead, the Petitioner repeats facts already in the record, and she resubmits copies of documents already in the record. Because the Petitioner does not state a new fact and, furthermore, because she does not support such a fact with documentary evidence, the submission does not satisfy the requirements of a motion to reopen; therefore, the motion will be dismissed. *See* 8 C.F.R. § 103.5(a)(2), (a)(4).

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.

On motion to reconsider, the Petitioner contests the correctness of our prior decision. Specifically, she asserts, "the AAO erred in not providing its conclusions regarding the evidence submitted to demonstrate that [the Petitioner] is an [a]lien of a [p]rofession holding an advanced degree or an [a]lien of [e]xceptional [a]bility in the insurance field."

The Petitioner incorrectly asserts on motion to reconsider that we erred by not addressing whether the Petitioner satisfies second preference eligibility criteria. We specifically stated that we "reserve a determination on the Petitioner's eligibility for the underlying immigrant classification, as either a member of the professions holding an advanced degree or as an individual of exceptional ability," citing *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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). Because we concluded that the record does not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest for the reasons explained in our decision, the Petitioner is ineligible for the requested benefit. *See* section 203(b)(2) of the Act. Therefore, the issue of whether the Petitioner may qualify for the underlying immigrant classification was unnecessary to the result we reached. Accordingly, our reservation of the issue of second preference eligibility was sound. *See id.*

The Petitioner also asserts on motion to reconsider that we misapplied the preponderance of evidence standard, referencing *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010), and *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987). The Petitioner further states that we "erred in not considering precedent [d]ecisions," specifically *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

In relevant part, *Matter of Chawathe* provides: "Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is 'more likely than not' or 'probably' true, the applicant or petitioner has satisfied the standard of proof." *Matter of Chawathe*, 25 I&N Dec. at 376 (citing *Cardozo-Fonseca*, 480 U.S. at 431 (discussing "more likely than not" as a greater than 50 percent chance of an occurrence taking place)). In turn, *Dhanasar* provides that, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

We incorporate by reference our analysis of the record in our prior decision, in which we addressed why particular evidence bears insufficient relevance, probative value, or credibility, specifically within the *Dhanasar* framework. We note that, although the Petitioner references on motion "the sheer multitude of argumentation and documents" in the record and she "disagree[s] with the underlying

[d]ecision," she does not establish that we incorrectly applied *Cardozo-Fonseca*, *Matter of Chawathe*, or *Dhanasar* therein.

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. Because the submission does not satisfy the requirements of a motion to reconsider, it will be dismissed. *See* 8 C.F.R. § 103.5(a)(3), (a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.