U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 28895723

Date: OCT. 24, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, an English language arts teacher, seeks employment-based second preference (EB-2) 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 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 that the Petitioner was eligible for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the job offer requirement, and thus a labor certification, would be in the national interest. We dismissed a subsequent appeal. The matter is now before us on motion to reopen.

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 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).

## I. TIMELY FILING

The record shows that after the Director denied her petition on December 6, 2022, we subsequently denied the her appeal on April 17, 2023. The Form I-797C, Notice of Action submitted by the Petitioner indicates that her initial Form I-290B, Notice of Appeal or Motion, was received on May 23, 2023, but was rejected on May 26, 2023 because it was filed on an outdated version of the form, and was not properly completed and signed. This motion to reopen was properly received on June 13, 2023.

The applicable regulations state that a motion on an unfavorable decision must be filed within 33 days of the date U.S. Citizenship and Immigration Services (USCIS) mails the decision. *See* 8 C.F.R. §§ 103.5(a)(1), 103.8(b). Here, because the final day of that period fell on a Saturday, the Petitioner's motion would have been timely received on Monday, May 22, 2023. As her motion was not properly received until June 13, 2023, it is not timely filed.

Failure to timely file a motion to reopen "may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner." 8 C.F.R. § 103.5(a)(1)(i). The Petitioner submits a letter in which she explains that after receiving the rejection notice, she resubmitted the Form I-290B, with the only change being that she wrote "N/A" in all fields which were not applicable to her motion. The notations and date stamps on the form verify that she resubmitted the same form that had been rejected with essentially the same information, and that this was subsequently accepted as properly filed. Accordingly, the Petitioner has sufficiently demonstrated that her delay in filing was reasonable and beyond her control, and we will excuse that delay as a matter of discretion.

## II. NATIONAL IMPORTANCE

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

In our previous decision, while we concluded that the Petitioner had established the substantial merit of her proposed endeavor, we determined that she had not established that it is of national importance. Specifically, we concluded that the Petitioner's proposed activities as a teacher of English language arts to teenage students at a correctional facility had not been shown to have broader implications in the field of education. In addition, we noted that the record did not include sufficient and detailed information regarding the Petitioner's intentions to conduct educational research, and thus did not demonstrate the national importance of this aspect of her proposed endeavor. Since this was dispositive of the Petitioner's appeal, we reserved adjudication of the second and third prongs of the *Dhanasar* analytical framework.

On motion, the Petitioner submits copies of her unofficial transcripts from [redacted] University, showing that she is pursuing a Ph.D. in English, as well as a syllabus for the school's I-Corps technology transfer program. She also submits a recommendation letter from an industry mentor in the I-Corps program. The Petitioner asserts that these new facts establish eligibility, as they provide further information regarding the research element of her proposed endeavor and its national importance. The Petitioner further explains that this research element previously involved her gaining insights while teaching students at [redacted] Academy and [redacted] University, and will continue in the area of educational technology as part of her doctoral studies and work on her [redacted] educational model as part of the I-Corps program.

We initially note that eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). That decision, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), further provides that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Although the evidence submitted constitutes new facts pertaining to her education and development of her proposed endeavor, it does not aid in establishing the Petitioner's eligibility at the time she filed her petition.

In addition, the evidence of the furtherance of the Petitioner's education and progress made towards the development of her educational model or platform relates to factors considered under the second prong of the *Dhanasar* framework, in which we determine whether an individual is well positioned to advance their proposed endeavor. But our previous decision focused on the national importance of the Petitioner's proposed endeavor, and in particular on the lack of specificity regarding how she would achieve her stated research goals. To the extent that the letter and the Petitioner's brief fill in some of the gaps in the description and direction of her proposed endeavor that we noted, other important gaps remain. In particular, she continues to assert that her proposed endeavor is of national importance because she will contribute to "efforts towards eliminating educational inequalities and teacher shortages in the United States." However, the record lack supporting documentation demonstrating that these issues are of national concern or importance, and the Petitioner provides only vague assertions that her proposed endeavor will somehow address them. For example, she states that she "witnessed teacher shortages as a key problem... and is working on developing the research model as a platform for subject matter experts in the different fields where teachers can utilize their passions and meet students' needs..." There is no explanation of how her model would directly address any teacher shortage or educational inequality, or otherwise impact the field of education more broadly.

Also, in her conclusion relating to the national importance of her endeavor, the Petitioner mentions a potential "significant economic impact in the near future" but provides no specific data or other evidence to support this claim. She also asserts that her proposed endeavor's potential prospective impact lies in its "involvement with deep technologies under a nationally recognized program." However, she has not shown how her involvement in the preliminary stages of the I-Corps program,[1] which did not occur until after her petition was filed, would potentially lead to her educational model having broader implications in the field of education. Further, while the stated goal of her proposed endeavor is the creation of the [redacted] educational platform, which would be accessible as a mobile or web-based application, the Petitioner has not shown that this availability by itself would lead to potential implications at the national or even global level in the education field.

For the reasons discussed above, the new evidence submitted on motion does not overcome our previous conclusion that the Petitioner's proposed endeavor is not of national importance, and that she is therefore not eligible for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's motion, we decline to reach and hereby reserve the Petitioner's arguments regarding the second and third prongs of the *Dhanasar* analytical framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that

[1] The letter from the I-Corps program mentor notes that the Petitioner has proposed a pilot project model to the program, and that the next phase, execution of the demonstration project, is subject to funding which has yet to be secured.

are unnecessary to the ultimate decision); *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).

**ORDER:** The motion to reopen is dismissed.