U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37246084

Date: APR. 04, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a sales manager, 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. 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 did not establish eligibility for a national interest waiver. We dismissed a subsequent appeal. The matter is now before us on a 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 motion.

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 the present case, the Petitioner's stated endeavor is to "continue working as a Sales Manager at [redacted]" "provid[ing]services to various U.S. logistics companies in the areas of pre-sale consulting management, sales support management, strategy optimization studies, and operational support management." In our appeal decision, we concurred with the Director's determination that the Petitioner did not establish that his proposed endeavor has national importance, the first requisite prong of the analytical framework for adjudicating national interest waiver petitions set forth in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1]

[1] *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) 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.

On motion, the Petitioner submits a brief and asserts that we erred by not conducting a de novo review of his case and overlooking the substantial documentation detailing how his work enhances U.S. companies' international competitiveness and strengthens supply chain efficiency. He further asserts that we erred by declining to evaluate the case under the second and third prongs of the *Dhanasar* framework.

On motion, the Petitioner does not explain how we erroneously applied law or policy. Instead, the Petitioner contends that we did not conduct a de novo review and then essentially reargue claims of his eligibility for a national interest waiver. However, contrary to the Petitioner's contention, we exercise independent de novo appellate review of all issues of fact, law, policy, and discretion. This means that, on appeal, we look at the record anew and our decisions may also address new issues that were not raised or resolved in the prior decision.[2] Further, as noted above, the purpose of a motion to reconsider is to show error in the most recent prior decision, not to re-adjudicate the petition anew. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit, in essence, the same brief and seek reconsideration).

With respect to our decision to reserve the Petitioner's appellate arguments regarding the second and third prongs of the *Dhanasar* framework, we first note that each prong is an independent ground of eligibility for the EB-2 classification. Therefore, the Petitioner's failure to meet the requirements of the first prong of the *Dhanasar* framework was dispositive of the Petitioner's appeal, and we were not required to address the Petitioner's appellate arguments regarding his eligibility under the second and third prongs. *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).

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. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(3).

ORDER: The motion to reconsider is dismissed.

[2] *See generally AAO Practice Manual,* Ch. 3 .4, https://www.uscis.gov/aao-practice-manual.