U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30745644

Date: APR. 18, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a financial advisor and entrepreneur, 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 record did not establish the Petitioner's eligibility for the requested national interest waiver. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider.[1]

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 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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings (the dismissal of the appeal). 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.

In our decision, 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 Director considered the Petitioner's evidence and determined that, while he established the substantial merit of his proposed endeavor, he had not demonstrated its national importance. And we noted that the Director's decision reviewed and analyzed the Petitioner's evidence and claims of eligibility, including his professional plan and industry articles, explaining that industry demand does not, by itself, demonstrate the national importance of the endeavor. We also

[1] In Part 2 of the Form I-290B, Notice of Appeal or Motion, the Petitioner indicated he was filing a motion to reconsider but the accompanying brief reflects the Petitioner's intention to file a combined motion to reopen and motion to reconsider; as such, we will treat the filing as a combined motion to reopen and reconsider.

determined that the business plan, which was submitted in response to the Director's request for evidence (RFE), amounted to a material change to the petition because it did not correspond to the proposed endeavor described in the initial filing. As a petitioner must establish eligibility for the benefit he is seeking at the time the petition is filed, we explained we would only consider the endeavor described in the Petitioner's initial filing. *See* 8 C.F.R. § 103.2(b)(1), (12); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (1971).

We concluded the Petitioner did not establish the national importance of his endeavor as he did not show it would have "national or even global implications within a particular field," or "significant potential to employ U.S. workers or ha[ve] other substantial positive economic effects." *See Dhanasar* at 890. We also explained that the Petitioner's discussion of his professional qualifications did not show the national importance of his proposed endeavor as his experience relates to the second *Dhanasar* prong, rather than the first prong. In addition, we noted several inconsistencies between the information contained in the business plan and the record as comprised at the initial filing, including the Petitioner's employment, which cast doubt on the reliability and sufficiency of the remaining evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Finally, we reserved the Petitioner's appellate arguments regarding his eligibility under *Dhanasar's* second and third prongs, as considering them would have served no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that 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).

On motion, the Petitioner submits a brief with no new evidence and asserts that our dismissal did "not evaluate all of the arguments presented by the Petitioner on appeal."[2] But the Petitioner's motion does not identify any arguments we purportedly did not evaluate. Notably, the Petitioner also does not address our conclusions regarding the discrepancies in the record pertaining to the business plan submitted in response to the Director's RFE or that his newly intended endeavor to start his own business constituted a material change. Further, the Petitioner does not specifically address our determination relating to *Dhanasar's* first prong or show that it was in error. Instead, the Petitioner makes only general assertions which do not establish that our appellate decision was incorrect and do not oblige us to re-adjudicate the appeal de novo.

The Petitioner has not established new facts relevant to our appellate decision that would warrant reopening of the proceedings, nor has he shown that we erred as a matter of law or policy. While the Petitioner alleges a general error in the Director's decision, he does not identify any specific error of law or fact in our prior decision. The Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; the motion must demonstrate how we erred as a matter of law or policy. *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 by generally alleging error in the prior decision). Consequently, we have no basis for reopening or reconsideration of our decision, and the combined motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

[2] While the Petitioner also makes general assertions that the Director erred, as previously stated, the scope of this motion is limited to our prior dismissal, not the Director's denial. 8 C.F.R. § 103.5(a)(1)(i), (ii).

The Petitioner's appeal therefore remains dismissed, and his underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.