U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37689877

Date: APR. 22, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner 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 while the Petitioner is an advanced degree professional and eligible for EB-2 classification, he did not establish his eligibility for a national interest waiver. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016) (establishing the three-pronged analytical framework used to evaluate discretionary national interest waiver petitions); *and see Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature). We dismissed a subsequent appeal and two combined motions to reopen and reconsider. The matter is now before us on a third combined motion 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 motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). On motion, the Petitioner submits a brief that asserts he is eligible for a national interest waiver because his proposed endeavor to own and operate a freight transportation trucking company is of national importance and that on balance, it would be in the United States' national interest to waive the requirements of a job offer and labor certification, and grant his waiver.[1] The Petitioner asserts that these new facts establish eligibility. Because 8 C.F.R. § 103.5(a)(1) limits the scope of a

[1] The Director determined that the Petitioner qualifies for EB-2 classification as an advanced degree professional, and that he established *Dhanasar's* prong two (relating to whether he is well-positioned to advance his proposed endeavor). In our initial appellate decision dismissing the Petitioner's appeal, we reserved consideration of the Petitioner's eligibility for the requested EB-2 category, as well as eligibility under the second and third *Dhanasar* prongs, citing to *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) and *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015). In these proceedings, the Petitioner continues to assert his eligibility under *Dhanasar's* second prong. However, because the Petitioner's eligibility under prong one is dispositive, we will continue to reserve the remaining issues.

motion to "the prior decision" and "the latest decision in the proceeding," we will only consider new evidence to the extent that it pertains to our latest decision dismissing the Petitioner's combined motion. In our prior motion decision, we determined that the Petitioner did not provide any new facts establishing the national importance of the proposed endeavor. Similarly, here, the Petitioner has not provided new facts to establish his eligibility for a national interest waiver. Instead, the Petitioner's brief restates the same assertions he made before the Director, in his appeal, and in his two prior motions to reopen. Thus, we have no basis to reopen the proceeding. *See Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (standing for the proposition that to determine whether a petitioner has met their burden under the preponderance standard, we consider the quality, relevance, probative value, and credibility of the evidence). As such, the Petitioner's motion to reopen is dismissed.

Next, we turn to the Petitioner's motion to reconsider. 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). Here, in his brief, the Petitioner lays out the three prongs of the *Dhanasar* framework for discretionary national interest waivers, and asserts we failed to consider the proposed endeavor's "contributions and the substantial economic impact of [his company]."[2] The Petitioner further explains that the endeavor aligns with national priorities aimed at "mitigating critical labor shortages in the U.S. trucking industry, enhancing supply chain resilience, and fortifying economic stability." Moreover, he alleges his company will help alleviate the economic drain caused by these issues through the hiring and training of truck drivers. The Petitioner generally alleges that our prior "decisions . . . failed to adequately evaluate the extensive documentation submitted in support of the petition." Specifically, the Petitioner points out that the relevant unevaluated evidence includes "a detailed business plan, labor market analyses, economic impact assessments, and supply chain reports," which he asserts establish the national importance of his endeavor.

As stated above, under 8 C.F.R. § 103.5(a)(1), the scope of our review is limited to "the prior decision" and "the latest decision in the proceeding." *Id.* Our prior decision determined the Petitioner's motion must be dismissed because his prong one assertions continued to rely primarily on the importance of the trucking industry, and "its collective impact." We also explained that the Petitioner's motion did not address our previous determination that the record contained insufficient support for "his hiring projections, considering the claimed shortage of truck drivers in the United States," and that it did not "specifically identify an instance in which we incorrectly applied the law or USCIS policy in arriving at our latest decision." Here, again, 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. Instead, the Petitioner's contentions in his current motion merely reargue facts and issues we have already considered in prior decisions.[3] *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (noting "a

[2] The Petitioner also references the Texas Service Center's decision denying his petition, which is beyond the scope of our review. *See* 8 C.F.R. § 103.5(a)(1)

[3] For instance, in our decision dismissing the Petitioner's appeal, we considered the economic impact of his proposed hiring and determined his assertions were not indicative of his endeavor's national importance. We also pointed out that because he "did not elaborate on how he intended to recruit 16 truck drivers in a five-year period given the stated shortage of truck drivers," his burden was not satisfied. Because this information came directly from his business plan, the Petitioner's assertion that we ignored this evidence is unfounded. Similarly, in our decision dismissing the Petitioner's first combined motion, we noted that we question "the reliability of the hiring projections . . . [as the Petitioner] did not

motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision"). We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

explain how he plans to recruit 16 truck drivers in a five-year period given the stated shortage of truck drivers." In our prior decision, which dismissed his second combined motion, once again we noted the record did not "provide sufficient support for his hiring projections, considering the claimed shortage of truck drivers in the United States." The Petitioner's current motion does not address the issue of his hiring projections. Each of our prior three decisions considered the Petitioner's evidence and related claims about his endeavor's positive economic impacts, and we informed him why the evidence was insufficient to satisfy his burden. Yet, in every subsequent motion, the Petitioner has not submitted evidence to address our concerns and instead, he continues to reassert the same claims regarding his eligibility for a discretionary national interest waiver. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. As such, the Petitioner's claims of his endeavor's positive economic impact and the evidence supporting these claims remain insufficient. *Id.*