U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31838917

Date: AUG. 05, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an aviation engineer and flight instructor, 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 did not establish 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 combined motions 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 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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(i), (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 our prior decision, incorporated here by reference, we determined the Petitioner did not meet the first prong of the analytical framework in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), to adjudicate national interest waiver petitions. We concluded the Petitioner did not establish the national importance of his proposed endeavor. *See id.* at 889 (providing in relevant part that, to establish eligibility for a national interest waiver, the petitioner must establish that their specific proposed endeavor has national importance).

On motion to reopen, the Petitioner does not assert any new facts and does not submit any evidence. His submission does not meet the requirements of a motion to reopen. On motion to reconsider, the

Petitioner asserts we erred in finding that he presented a new set of material facts in response to the Director's request for evidence (RFE) concerning his plan to open his own flight school in addition to his flight testing and engineering career. He argues we incorrectly concluded that those new facts cannot establish eligibility for the national interest waiver. We noted in our prior decision that a petitioner must establish eligibility for the benefit he is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to U.S. Citizenship and Immigration Services (USCIS) requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

The Petitioner reiterates his argument that *Matter of Katigbak* and *Matter of Izummi* are limited in scope and not applicable to the national interest waiver petition. He repeats his assertion that USCIS allows the introduction of additional evidence through the RFE process and provides the opportunity to present new evidence to satisfy the three prongs of the *Dhanasar* analysis. The Petitioner does not cite any error in our application of *Dhanasar* or specify any other legal error or misapplication of policy in our prior decision.

We noted in our prior decision that though the Petitioner initially expressed a plan to create a new flight course for flight instructors with a new syllabus based on his flight instructor experience, he did not indicate at the time of filing that his proposed endeavor would entail founding his own flight school. We explained that the change to his proposed endeavor, as detailed in his RFE response, presented a new set of facts and were material to the first *Dhanasar* prong because the scope of the proposed endeavor affects whether it may have the type of broader implications contemplated by *Dhanasar*. *See Dhanasar*, 26 I&N Dec. at 888-90. We further explained that section 203(b)(2)(A) of the Act makes second-preference visas available, in relevant part, to qualified individuals whose services in the sciences, arts, professions, or business are sought by an employer in the United States and section 203(b)(2)(B) establishes criteria for a discretionary national interest waiver of the job offer requirement. Because the job offer requirement must be satisfied at the time of filing as part of a requested visa classification, eligibility for the waiver of a requisite job offer must also be satisfied based on the set of facts that existed at the time of filing as part of the requested visa classification.

The Petitioner's submission does not meet the requirements of a motion to reopen. 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 motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.