U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32841272

Date: AUG. 09, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur in healthcare and life sciences management, 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 Petitioner's Form I-140, Immigrant Petition for Alien Workers, concluding that the Petitioner was a member of the professions holding an advanced degree or their equivalent, but that the record did not establish he merited a national interest waiver. We dismissed a subsequent appeal after concluding the Petitioner did not establish the national importance of his proposed endeavor as is required to establish he merits a national interest waiver. 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

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).

On motion, the Petitioner submits additional articles and industry reports related to certain companies, employment and training, and the life sciences field in general to support a new statement describing revenue and staffing projections for, and the expected economic impact of, his proposed endeavor. He also submits a new recommendation letter that attests to the his capabilities and the importance of e-learning and skill development in the life sciences field. The Petitioner asserts that these new facts and evidence establish his proposed endeavor has national importance.

As noted in our previous decision, which we incorporate here by reference, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement under prong one of the *Dhanasar* framework for adjudicating national interest waiver petitions, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). In *Dhanasar*, we further stated that we consider the proposed endeavor's "potential prospective impact," and "look for broader implications" noting that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* Further, "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

We previously determined the Petitioner's proposed endeavor was not nationally important because the evidence submitted was generally related to the importance of the life sciences industry rather than the proposed endeavor; that the evidence was insufficient to establish the services offered by the proposed endeavor rose to the level of national importance; and finally, that the evidence did not establish the proposed endeavor has significant potential to employ U.S. workers at a scale commensurate with national importance or will have substantial positive effects as contemplated by *Matter of Dhanasar*. *See id.*

Similarly, the new evidence, including the new articles and industry reports, provided on motion generally relates to the importance of the life sciences field, including information about companies already operating in the field, rather than the national importance of the Petitioner's specific proposed endeavor or its potential prospective impact. *See id.* at 889. The evidence does not sufficiently explain or demonstrate how the Petitioner's intention to provide online learning and skill development offers original innovations will advance, or otherwise have broader implications in, the field of life sciences, or are at a level that would have national implications in the life sciences field. We note, for instance, that in the new reference letter written by the Petitioner's former classmate, the writer claims that "[t]raditional methods of imparting knowledge through textbooks and lectures are often insufficient," and that "[a]n e-learning platform…offers a transformative solution…which is not available at the scale [the Petitioner] is proposing." The writer does not provide any additional, probative details to substantiate the statement or show that the claimed scale of the endeavor is commensurate with national importance under *Dhanasar*. Further, as alluded to above, the Petitioner has provided evidence of four other companies that are operating as online/e-learning platforms since 2013 or earlier providing services to millions of users, which undermines the writer's claim that the Petitioner's proposed endeavor would be transformative.[1] Finally, while the Petitioner claims on motion that his proposed endeavor will start with a core team of employees and increase gradually, the record lacks sufficient detail and evidence to substantiate the expected growth, and the Petitioner does not address where such employment growth would occur, including whether or not it would occur in an economically depressed area. The record, including the new evidence submitted on motion, is

[1] While not submitted with the motion, we note that the Petitioner's business plan also identifies other existing traditional academic institutions, large life science companies, massive open online course providers, and small niche education/training companies as established in the life science learning and skill development business.

therefore insufficient to establish the proposed endeavor has *significant* potential to employ U.S. workers or has other *substantial* positive economic effects to demonstrate its national importance. *Id.* at 890.

As noted above, we may grant a motion to reopen that states new facts, is supported by documentary evidence, *and* demonstrates eligibility for the requested immigration benefit. 8 C.F.R. § 103.5(a)(2). The Petitioner's assertions and new evidence does not establish by a preponderance of the evidence that his proposed endeavor is nationally important and he therefore remains ineligible for EB-2 immigrant classification. Thus, he has not established that his motion to reopen should be granted.

B. 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). 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.

In our previous decision, we stated that to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889.

On motion, the Petitioner claims that an endeavor operating in an industry or field of strategic importance to the United States should be deemed to be nationally important, and that because his proposed endeavor is inherently intertwined with the significance of the life science industry it therefore aligns with broader national interests. Additionally, the Petitioner claims that "[r]equesting [a petitioner] to show that an initiative would solve challenges in the field or industry at scale commensurate to national importance will put novel, unproven or undocumented initiatives at risk." The Petitioner does not, however, provide any legal authority to establish our application of the *Dhanasar* framework was incorrect as a matter of law or policy.

Additionally, the Petitioner asserts generally that we failed to fully consider the nature of his proposed endeavor, in particular with respect to its scalability and impact. However, he does not identify specifically how we erred. Our review of the record reflects that we fully reviewed and considered the Petitioner's business plan and supporting documents in finding that they did not establish that his endeavor has the potential to impact the life sciences industry or life sciences education at a level demonstrating its national importance. To the extent the Petitioner claims that scalability, and thus potential prospective impact, is inherently built into his proposed endeavor, the Petitioner bears the burden of proof to establish eligibility for the benefit he seeks, including the proposed endeavor's potential prospective impact pursuant to the *Dhanasar* analytical framework. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. Here, the Petitioner's general assertions on motion that the inherent scalability of his proposed endeavor establishes its national importance is insufficient to meet that burden.

Based on the above, the Petitioner has not established 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). He therefore has not demonstrated his motion to reconsider should be granted.

As the Petitioner has not established that reopening and reconsideration is warranted, the combined 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.