U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32570800

Date: AUG. 21, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an aircraft mechanic in the aviation industry, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 established he was an advanced degree professional, but had not demonstrated 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 motion.

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)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

In our decision dismissing the Petitioner's appeal, we noted that the Petitioner's proposed endeavor involved the operation of a business that would provide "both corrective and preventive aircraft maintenance services, and ancillary services such as consulting and training" and that the Petitioner stated that he would "alleviate the tremendous industry shortage of aviation mechanics by offering his training expertise to the U.S. aviation market to include, among others, airlines, companies, training centers, and flight schools." We concluded that the Director's decision thoroughly reviewed, discussed, and analyzed the record, including the Petitioner's submission of industry reports and articles regarding the importance of entrepreneurship in the United States and the growth of the aviation industry, evidence of his job experience and skills, and the economic impact of his proposed

endeavor when concluding that the Petitioner had not established its national importance. We addressed the Petitioner's arguments that his endeavor would alleviate a national labor shortage of aviation mechanics and would result in substantial positive economic benefits at a level commensurate with national importance. However, we concluded, upon review of the totality of the record, that he had not offered sufficient evidence to support these assertions. We then adopted and affirmed the Director's decision and dismissed the appeal, finding that the Director correctly concluded that the Petitioner had not established, by a preponderance of the evidence, the national importance of his proposed endeavor. *See Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) (providing a framework for adjudicating national interest waiver petitions and requiring that the petitioner demonstrate that the proposed endeavor has both substantial merit and national importance as the first prong of this analytical framework.). Because the identified reasons for dismissal were dispositive of the Petitioner's appeal, we declined to reach the remaining arguments concerning his eligibility under the *Dhanasar* framework.[1]

On combined motion to reopen and reconsider, the Petitioner submits a brief. He first argues that the Director did not fully consider all of the evidence and arguments presented with his initial petition and with his response to the Director's request for evidence and that, because of this, the Director violated the Fifth Amendment of the United States Constitution. He contends that had the Director properly considered this evidence, the Director would have concluded that the record established the Petitioner's eligibility for the classification sought. The Petitioner next contends that our decision was deficient as it did not consider every argument that he presented on appeal and asserts that each of these arguments demonstrates a clear link between this proposed endeavor and national importance.

Although the Petitioner argues that the Director did not fully consider all the evidence and arguments in support of his petition and thus erred in finding him ineligible for the classification sought, our review on motion is limited to our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). In our prior decision, we reviewed the record and concluded that the Director's decision considered and thoroughly analyzed all the evidence and claims concerning the impact of his proposed endeavor, and it correctly concluded the Petitioner had not established its national importance. The Petitioner asserts that if we had considered every argument presented on appeal, we would have concluded that he had established his eligibility for the classification sought and that a favorable exercise of discretion was warranted in waiving the job offer requirement and thus of the labor certification. The Petitioner does not specify which of his appellate arguments we failed to address or explain how our failure to do so resulted in a deficient decision. He therefore has not offered sufficient support for his assertion on motion or demonstrated how our decision was based upon an incorrect application of law or policy at the time it was issued.

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. The Petitioner has also not submitted additional evidence in support of the motion to reopen that demonstrates eligibility for the requested benefit. Therefore, the motion will be dismissed. *See* 8 C.F.R. § 103.5(a)(4).

[1] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.