U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35078730

Date: DEC. 11, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a general manager of a private country club, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability as well as a national interest waiver of the job offer requirement attached to this classification. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish eligibility for a national interest waiver. We dismissed a subsequent appeal and a combined motion to reopen and reconsider. The matter is now before us on another 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 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)(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 the present case, the Petitioner's stated endeavor is to continue employment as the general manager of the [redacted] In our appeal decision, we concurred with the Director's determination that the Petitioner did not meet the three requisite prongs of the analytical framework for adjudicating national interest waiver petitions set forth in Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).[1] In addition, we concluded that the Petitioner had not established eligibility for EB-2 classification as a member of the professions with an advanced degree because he had not provided sufficient evidence that the positions he held following his bachelor's degree amounted to five years

[1] Dhanasar states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen is well positioned to advance the proposed endeavor, and (3) that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

of progressive experience in his field of media arts or that he was an individual of exceptional ability. In denying the Petitioner's subsequent motion, we determined that the Petitioner's new evidence did not overcome our determination that he did not establish eligibility for the EB-2 classification as a member of the professions with a bachelor's degree and five years of progressive experience in his field,[2] the national importance of his endeavor, or his positioning to execute the proposed endeavor.

On motion, the Petitioner submits a brief, a letter of recommendation from a former chief executive officer of the [redacted] where the Petitioner worked from 2004 to 2008; a letter of recommendation from the co-founder of [redacted] where the Petitioner worked for one year; and an article from the Korea IT Times publication which includes a quote from the Petitioner. He asserts that these documents provide sufficient evidence that he has five years progressive experience in the field of media arts and support his contention that his proposed endeavor to continue employment as general manager of the [redacted] meets the standard for the national interest waiver.

Even assuming arguendo that the Petitioner's evidence submitted on this second motion contains sufficient detail to establish that he accumulated five years of progressive experience in his field, with respect to meeting the three requisite prongs of the Dhanasar framework – with each prong being an independent ground of eligibility for the EB-2 classification – the Petitioner does not provide any new evidence or arguments which overcome our prior determination, but instead, he reiterates his prior arguments. We note here that while the Petitioner argues that the new evidence regarding his five years of experience in his field establish that "he is well positioned to contribute to more significant economic growth that is of national importance," as we emphasized in our prior decisions, the record does not sufficiently link the field of the Petitioner's educational credential in media arts with the performance of general management duties for corporations – and even if they were linked, this would not demonstrate the Petitioner's positioning to advance his endeavor because simply having education, skills, and/or knowledge in isolation do not place a petitioner in a position to advance their proposed endeavor.

As the Petitioner's arguments on motion do not directly address the deficiencies identified in our prior decision regarding the national importance of his endeavor, whether he is well positioned to advance the proposed endeavor, and whether on balance it would be in the best interest of the United States to waive the job offer and labor certification requirements, the Petitioner has not established that our prior decision was based on an incorrect application of law or policy as required for a motion to reconsider. 8 C.F.R. § 103.5(a)(3).

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. 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 motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

[2] In our prior decision, we determined that the Petitioner did not provide sufficient evidence of five years of progressive experience in the field of media arts because his employment letters did not contain a description of his job duties as required by regulations. 8 C.F.R. § 204.5(g)(1).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.