U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 34927230

Date: DEC. 17, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur seeking to establish a data integration consultancy company, 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 a labor certification, would be in the national interest. We dismissed a subsequent appeal in which we concurred with the Director that the Petitioner had not demonstrated the national importance of his endeavor. 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 combined 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).

On motion, the Petitioner submits copies of three online articles explaining how data integration works and its benefits. The Petitioner asserts that these new facts establish eligibility, as they support his claim that the data integration service he plans to provide "generate broader positive implications rising to a national scale of benefits." However, these articles are similar to those submitted previously on appeal and initial filing[1] in that they provide general information about industries related to the Petitioner's endeavor. Similarly, these submissions discuss the industry as a whole and do not

[1] The Petitioner previously submitted online articles containing facts about the U.S. oil and gas industry.

specifically address the Petitioner's own proposed endeavor and how it would enhance the existing industry. The Petitioner's submission on motion does not overcome our prior conclusion that he has not established the national importance of his proposed endeavor to qualify for a national interest waiver. Therefore, the motion to reopen is dismissed as the Petitioner has not the requirements of such a motion pursuant to 8 C.F.R. § 103.5(a)(4).

On motion to reconsider, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner relies on regulations and policy in asserting the standard of national interest was incorrectly applied. The Petitioner claims the decision "erroneously equates lack of geographical implication and lack of potential to employ U.S. workers as failure to show national importance," while disregarding other criteria. Specifically, the Petitioner argues that the decision disregards the national initiative criterion in the *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016) framework and does not establish how each criterion is taken into consideration and weighed. As such, the Petitioner contends this ambiguity, diminished evidentiary weight, and shifting standards led to him being deprived of his "right to regular process," in a "violation of regulation and service."

However, as stated in our appeal decision, the national importance criteria described in *Dhanasar* were considered both individually and cumulatively. So, a proposed endeavor can rise to the level of national importance by establishing one of more of the criteria, but the totality of the evidence must demonstrate by a preponderance of the evidence that the endeavor is of national importance. The national importance criteria referenced above by the Petitioner do not constitute requirements to demonstrate national importance, as the list is not exhaustive nor requires each criterion to be established. Contrary to the Petitioner's assertions, we explicitly considered non-economic and geographical arguments and evidence submitted by the Petitioner, including the Petitioner's assertions that he plans to consult and advise legal entities across industries including oil and gas; manufacturing, construction, and biotechnology; that his services will enhance operations efficiency and boost innovation in these industries; and that he will address the need to develop growth-oriented small and medium-sized businesses. After reviewing the evidence of record, we correctly concluded the Petitioner's proposed endeavor did not rise to the level of national importance.

On motion, the Petitioner reiterates his claims that his proposed endeavor, starting a data integration consulting company, would provide services to small and medium-sized businesses in the industries of oil and gas, manufacturing, construction, and biotechnology, which would benefit the economy and population. The Petitioner asserts his proposed endeavor would: enhance decision making, improve data quality and accuracy, increase efficiency, better business intelligence and reporting, enhance customer insight, better the customer experience and relationships, increase security, have scalability, lead to innovation and competitive advantage, democratize data, streamline operations, and increase revenue potential while decreasing costs. However, as stated in our appeal decision, we focus not on the specific area or field at issue, but the specific endeavor a petitioner proposes to undertake. *See Matter of Dhanasar* at 889. Here, while we acknowledge the importance of the general fields of data integration, oil and gas, manufacturing, construction, and biotechnology, the Petitioner has not demonstrated that the potential prospective impact of his specific endeavor would impact these fields more broadly, at a level of national importance.

On motion, the Petitioner asserts his endeavor includes entrepreneurship "at a time when entrepreneurship seems to be dwindling in the U.S."[2] The Petitioner reiterates on motion his claim that he intends to establish his company in Florida, where "small businesses are of paramount importance to the local economy," and plans expansion in the future. The Petitioner asserts his endeavor will generate direct and indirect jobs while stimulating the investment of foreign companies in the United States and generating a multiplier effect of opportunities and businesses in the U.S. economy. On appeal, we determined that based on the economic projects provided by the Petitioner, the record did not establish his endeavor would have broad national impact on the consulting industry, small and medium-sized companies, or substantial economic benefits for the country or region in which he plans to operate. And the general economic claims made on motion also do not contain sufficient detail or explanation and are not supported by objective, corroborating evidence to demonstrate how the proposed endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

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).

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.

[2] The Petitioner also asserts on motion that his endeavor is unique due to his "diverse professional background" and "ability to adapt in excel in various settings," which led to his "proven superior performance in his field, professional achievements, and expertise." However, these factors relate to the second prong of the *Dhanasar* framework. *Matter of Dhanasar*, 26 I&N Dec. at 890. The second prong of the *Dhanasar* analysis examines whether the petitioner is well positioned to advance the proposed endeavor and shifts the focus from the proposed endeavor to the individual. *Id.* As the second prong was not discussed in our previous decision, it is not appropriate for us to consider it here on motion.