U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35980765

Date: FEB. 05, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, an industrial and quality engineer, seeks employment-based second preference (EB-2) classification as either a member of the professions holding an advance degree or an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 the Petitioner had not established eligibility for the underlying EB-2 classification or 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 and motion to reconsider. The matter is now before us on a second motion to 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 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 prior decision, we noted the Petitioner's request for a thorough evaluation of his exceptional ability claims. He asserted that a remand was justified since we withdrew the Director's determination regarding the licensure requirement in our decision dismissing his appeal. We did not remand the matter to the Director to perform a final merits determination as the Petitioner had not otherwise established eligibility for the waiver of the job offer requirement in the national interest. We also referred to our initial dismissal where we adopted and affirmed the Director's determination that the Petitioner did not establish his proposed endeavor satisfied the national importance element of the first prong under *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). Our decision noted that the Director thoroughly evaluated the Petitioner's claims relating to the first prong's national importance

element and found that on appeal the Petitioner provided the same information he presented to the Director in response to the request for evidence (RFE).

In the previous motion, the Petitioner argued that he reproduced the text presented to the Director in response to the RFE to strategically reiterate his arguments and emphasize the Director's oversight in evaluating the evidence. The Petitioner asserted that the Director rejected relevant, probative, and credible evidence and failed to adequately assess evidence submitted to demonstrate the national importance of the proposed endeavor. We dismissed the motion, concluding that the Petitioner's vague assertions and disagreement with the Director's assessment of evidence did not establish that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. We further noted that we reviewed the record and determined that the Director's decision considered and thoroughly analyzed the evidence and claims concerning the impact of the Petitioner's proposed endeavor and correctly concluded the Petitioner had not established its national importance.

With the instant motion, the Petitioner asserts that we erred in our prior decision. He contends that we erred as "a matter of law or policy by failing to remand" the petition for further review and we did not take into account or consider "the substantive arguments presented by the Petitioner to demonstrate that his endeavor satisfies the first prong of the *Matter of Dhanasar* analysis" and meets the national importance requirement. Here, the Petitioner does not demonstrate how our dismissal of his motion to reconsider was based on an incorrect application of law or policy based on the evidence in the record. As noted, our review is limited to reviewing our most recent decision. We addressed the Petitioner's prior arguments in our earlier decision, and the Petitioner's repetition of the same arguments does not show proper cause for reconsideration.

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 reconsider is dismissed.