U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35000441

Date: FEB. 6, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a lawyer, 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 the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, but did not establish 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 motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). 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.

The Petitioner indicated that he will establish a consulting firm in the United States that will advise United States-based businesses interested in entering the Brazilian market. The Petitioner explained that he will lead the company, which will focus on providing advice on Brazilian law to businesses and individuals who are engaged in trading and direct foreign investment projects. The Petitioner stated his company will be based in [redacted] Florida and will later expand across Florida and to other states. In our previous decision dismissing the Petitioner's appeal, we concluded that the record did not establish the national importance of the Petitioner's proposed endeavor, as required by the first prong of the framework for adjudicating national interest waiver petitions under *Matter of Dhanasar*,

26 I&N Dec. 884, 889 (AAO 2016). Specifically, we determined that the Petitioner did not establish his proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, or has national or even global implications within his field or other broader implications indicating national importance. Because this conclusion was dispositive of the appeal, we reserved our opinion as to the remaining *Dhanasar* prongs.

A. Motion to Reopen

On motion to reopen, the Petitioner asserts his endeavor includes entrepreneurship, "at a time when entrepreneurship seems to be dwindling in the U.S."[1] The Petitioner claims he aims to establish his firm in Florida, where "small businesses are of paramount importance to local economy as they provide nearly two-thirds of the net new private jobs in the state." The Petitioner asserts his proposed endeavor will "not only generat[e] direct and indirect jobs but also stimulate[] the investment of foreign companies on American soil, generating a multiplier effect of opportunities and business for the American economy." As stated in our appeal decision, we considered whether the economic activity resulting from his proposed endeavor would rise to the level of substantial positive economic impacts and if the endeavor has a significant potential to employ U.S. workers, indicative of national importance, and we determined that they did not. Specifically, we noted the Petitioner's business plan did not provide sufficient explanation for the basis of his economic projections, including revenue and job creation, and did not establish the company would operate on a scale rising to the level of national importance. The assertions made on motion include limited information regarding employment by small businesses in Florida but the record still does not corroborate the claimed job and revenue projections for the proposed endeavor or otherwise establish the Petitioner's own proposed endeavor would have substantial positive economic effects or has potential to employ U.S. workers at a level indicating its national significance. He therefore has not established new facts overcoming our prior determination and establishing eligibility.

The Petitioner also submits three new industry articles: 1) *Unlocking Opportunities: Nearshoring in Latin America for US Investors*, published on the web at White & Case, a global law firm, on November 6, 2023; 2) *Why are Business Expanding into Latin America?*, published on the web at MBI Talent Group on March 14, 2023; and 3) *How Walmart Missed the Mark in Brazil*, published on the web at Castus Global, a business development firm, on May 23, 2022. Evidence for a motion to reopen must contain new pertinent facts. 8 C.F.R. § 103.5(a)(2).

The newly submitted industry articles all generally discuss financial investments in and business expansions to Latin America, namely Brazil, and do not speak specifically to the Petitioner's specific endeavor he proposes to undertake and how the proposed endeavor may have national or even global implications within a particular field, significant potential to employ U.S. workers, or other substantial positive economic effects reflecting the endeavor's national importance, as contemplated by *Matter of*

[1] The Petitioner also asserts on motion that his endeavor is unique due to his "diverse professional background and his experience in different beauty environments, demonstrating his ability to adapt and excel in various settings." However, these factors relate to the second prong of the *Dhanasar* framework. 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.* At issue here is whether the Petitioner established the national importance of his endeavor under prong one.

Dhanasar, 26 I&N Dec. at 889-90. The Petitioner's evidence on motion to reopen therefore does not establish new facts overcoming our prior determination and demonstrating the national importance of the Petitioner's endeavor and eligibility for a national interest waiver. Therefore, we will dismiss the motion to reopen. 8 C.F.R. § 103.5(a)(2), (4).

B. Motion to Reconsider

On motion to reconsider, the Petitioner submits, in essence, the same brief he submitted on appeal, containing many passages—including entire paragraphs—of verbatim text, generally alleging error in our prior decision. A motion to reconsider is not a process by which a petitioner may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). More specifically, the Petitioner generally reasserts on motion to reconsider that both our prior decision and the Director's underlying decision improperly "equate[d] the lack of geographical implication and the lack of potential to employ U.S. workers as failure to show national importance," contrary to *Matter of Dhanasar*. The Petitioner also reiterates generalized assertions already in the record, such as that the proposed endeavor "surpasses merely generating revenue for private companies [or] individuals[;] it creates financial bridges, and prompts economic development enhancing and improving the functionality and monetary output of the nation's economy."

We first note that, contrary to the Petitioner's reassertions on motion to reconsider, we did not limit our *Dhanasar* prong one analysis to the proposed endeavor's geographical implications. Rather, as noted above, we explained that the record does not establish how the proposed endeavor may have the type of broader implications contemplated by the first *Dhanasar* prong, such as the work extending beyond the Petitioner's company's individual clients to impact his field more broadly on a level commensurate with national importance, or that it has significant potential to employ U.S. workers. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. Thus, in *Dhanasar*, we determined that the Petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 889, 893. On motion, the Petitioner again makes the same generalized and uncorroborated assertions about the proposed endeavor's potential economic effects but does not identify any specific legal or factual error in our previous determination that he did not demonstrate how the endeavor the Petitioner proposes to undertake may have national or even global implications within his field or how the prospective economic impact of the endeavor would be at the level of national importance. *See id.* at 889-90.

Because 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 or that it was incorrect based on the record at the time, the motion to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(3)-(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.