U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34992974

Date: FEB. 10, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, an industrial engineer and entrepreneur, 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 established that he qualified for EB-2 classification as an advanced degree professional but that he had not established that a discretionary waiver of the job offer requirement, and thus of a 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.

In our appellate decision, we agreed with the Director's decision and concluded that the Petitioner had not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* analytical framework. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). We concluded that the Petitioner had not demonstrated that his endeavor would have broader implications as envisioned by *Dhanasar*. *Id*. at 889. We determined that the Petitioner's contention that his endeavor would "help to create a highly qualified domestic workforce" was not supported by the evidence in the record. Further, we concluded that the evidence in the record did not establish that the Petitioner's endeavor would offer substantial direct economic benefit through employment levels, business activity, related tax revenue, or associated indirect economic benefits at a level commensurate with the national importance under *Dhanasar*'s first prong.

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). 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 an updated personal statement, letters of support, and an expert opinion letter. The Petitioner asserts that these new facts establish eligibility for a national interest waiver.

In his statement submitted on motion, the Petitioner makes broad assertions without evidence in support. For instance, the Petitioner states that "[b]y actively participating in this landscape, my venture is essentially upholding the United States' standing as a land of opportunity, thereby supporting national interests." Likewise, the Petitioner foresees his endeavor providing a "significant contribution to the American job market." The Petitioner speaks of creating "stable, well-paying jobs for a diverse range of professionals." The Petitioner states that he plans to hire during his company's first year: one forklift operator, one flooring machine operator, one concrete mixer operator, two flooring machine helpers, two packaging and loading helpers, and two sales representatives.

The Petitioner does not explain how hiring nine employees, in addition to himself as industrial engineer, will have national or even global implications commensurate with the standard of national importance. While the Petitioner does indicate his endeavor will be based in Florida on motion, he does not show how it will have broader implications for the region that are commensurate with national importance. "Certain locally or regionally focused endeavors…may be of national importance despite being difficult to quantify with respect to geographic scope." *Matter of Dhanasar,* 26 I&N Dec. at 887, 889. Yet, a petitioner must still show how the proposed endeavor will have broader implications for a field or region than ones that impact solely a business, its suppliers, and its customers.

Additionally, the support letters submitted do not sufficiently demonstrate his proposed endeavor's national importance. For instance, the support letter from M-F-L- relates that the Petitioner has the ability to "drive business outcomes" and that he has "significant knowledge and expertise in the industrial sector of concrete pipes and rainwater galleries."[1] While the letter praises the Petitioner's abilities, it does not speak of the Petitioner's proposed endeavor or the endeavor's potential prospective impact relevant to the first prong of national importance. Likewise, letters from M-K-, M-A-S-C-, R-G-M-, and C-Y-S-, all laud the Petitioner's achievements and abilities. What the letters do not provide is information on how the Petitioner's proposed endeavor has a "significant potential to broadly enhance societal welfare or cultural or artistic enrichment, or to contribute to the advancement of a valuable technology or field of study." *Matter of Dhanasar*, 26 I&N Dec. at 889-90, *see generally* 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policy-manual. Instead, the letters predominantly relate to whether the Petitioner is well-positioned to advance his endeavor under *Dhanasar's* second prong.

The Petitioner further submits an expert opinion letter from an engineering professor at the [redacted] Professor [redacted] Professor [redacted] evaluated the Petitioner's eligibility for a national interest waiver using the *Dhanasar* framework. In addressing prong one, Professor [redacted] concludes that the Petitioner's endeavor will be a "national asset" because the Petitioner will run a small business and be an entrepreneur. Further, Professor [redacted] states the Petitioner's endeavor will provide employment opportunities, pay taxes, and be part of the

[1] While we do not discuss each piece of evidence contained in the record individually, we have reviewed and considered each one.

manufacturing sector which contributed $2.4 trillion to the U.S. economy in 2019. Additionally, Professor [redacted] opines that the Petitioner's proposed endeavor of "support[ing] the growth and popularity of functional paving solutions that serve drainage flooring purposes" through the manufacture of "high-quality concrete pavers" does not have a "negative impact on the natural environment." Thus, Professor [redacted] contends that this aligns the Petitioner's endeavor with a national initiative regarding pollution control in the manufacturing sector. Finally, Professor [redacted] argues that the Petitioner's endeavor related to drainage issues will broadly enhance individual and societal welfare by facilitating swimming in pools, landscaped gardens, and drainage.

We may, in our discretion, use as advisory opinions statements submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an individual's eligibility. Professor [redacted] letter does not address factors or explain how the Petitioner's endeavor would be of national importance to meet *Dhanasar's* first prong. Instead, the letter recites general industry information, national initiatives, and the Petitioner's skills, which go to *Dhanasar's* second prong. Thus, the letter is of minimal probative value.

Because the Petitioner has not provided new facts such that demonstrate his proposed endeavor's national importance under *Dhanasar's* first prong, we conclude that the requirements for a motion to reopen have not been met.

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.

On motion, the Petitioner contests the correctness of our prior decision. Upon review of the legal brief provided by counsel on motion, we are unable to determine whether the Petitioner desires to challenge the correctness of our appellate decision or of the Director's underlying decision. For instance, the Petitioner states that "[w]e sincerely expect the AAO to revisit the USCIS' [sic] decision and correct this erroneous decision."[2] The Petitioner contends that "USCIS officers may not unilaterally impose novel substantive or evidentiary requirements beyond those set forth in the regulations" citing to *Love Koren Church v. Chertoff*, 549 F.3d 749, 758 (9th Cir. 2008). Likewise, the Petitioner urges that the adjudicative standard for his petition is preponderance of the evidence and cites to various decisions including *Matter of E-M-*, 20 I&N Dec. 77, 83 (BIA 1989).

However, we find the Petitioner's arguments unavailing. The Petitioner does not illustrate how we erred in our application of the decisions he cites. The Petitioner correctly indicates that the standard of proof in this matter is preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). While we agree that the preponderance of the evidence standard controls, the Petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *See Matter of Y-B-*, 21 I&N Dec. at 1149 n.3 (BIA 1998). We find that the Petitioner has not demonstrated how we erroneously applied the standard of proof or how we

[2] We note this sentence, and much of the legal argument that follows, appears verbatim in the Petitioner's brief on appeal.

introduced novel substantive or evidentiary requirements. Further, the Petitioner's arguments on motion merely reargue facts and issues we have already considered in our previous decision. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision").

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 motions 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.