U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36617821

Date: FEB. 18, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner 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 Nebraska Service Center denied the petition, concluding that the Petitioner qualified for 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 the Petitioner's subsequent appeal. The matter is now before us on a 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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

In our most recent decision dismissing the Petitioner's appeal, we determined that the Petitioner's revised endeavor statement submitted in response to the Director's request for evidence (RFE) amounted to a material change to his proposed endeavor. We noted that the business plan, which was submitted in response to an RFE, amounted to a material change to the petition because the Petitioner did not outline an intention to start his own business in the documentation initially included with his petition. Accordingly, we informed the Petitioner that we would not consider the materially changed proposed endeavor on appeal, as a petitioner must establish eligibility at the time of filing.[1] And,

[1] 8 C.F.R. §§ 103..2(b)(12); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971) (confirming that " [a]

relying on *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998), we also informed the Petitioner that he may not make material changes to his petition in an effort to make a deficient petition conform to USCIS requirements. We reviewed the proposed endeavor as described with the initial petition and concluded that the Petitioner did not establish that the proposed endeavor has substantial merit or national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We determined that the Petitioner did not provide any new evidence or arguments on appeal to overcome the Director's determination.

We also reserved the Petitioner's appellate arguments regarding his eligibility under *Dhanasar's* second and third prongs, as considering them would have served no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). For the sake of brevity, we incorporate our previous analysis of the record and will repeat only certain facts and evidence as necessary to address the Petitioner's assertions on motion.

On motion, the Petitioner contests the correctness of our prior decision and states that we were factually and legally incorrect in finding that the Petitioner materially changed his proposed endeavor. The Petitioner also contends that we did not follow the proper evidentiary standard and that we ignored evidence submitted and should now review the entire record.

On motion, the Petitioner asserts that our decision did not give full consideration to the evidence of record. However, as noted in our decision, due to the material change in the proposed endeavor we reviewed the documentation submitted with the initial petition. Concerning the determination of material change, the Petitioner does not adequately explain how his newly intended endeavor, as outlined in his response to the RFE, to start his own business does not constitute material change. Further, the Petitioner does not specifically address our determination relating to *Dhanasar's* first prong or establish that it was in error. Instead, the Petitioner makes general assertions that our dismissal of his appeal is wrong. Such assertions do not establish that our appellate decision was incorrect and do not oblige us to re-adjudicate the appeal de novo.

The Petitioner further alleges that we did not apply the proper standard of proof in this case. Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe*, 25 I&N Dec. at 375 (AAO 2010). Accordingly, "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See generally* 1 USCIS Policy Manual, E.4(B), https://www.uscis.gov/policy-manual. While the Petitioner asserts that he has provided evidence sufficient to demonstrate his eligibility for a national interest waiver, he does not further explain or identify a specific instance in which we applied a standard of proof other than the preponderance of evidence in dismissing the appeal.

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petitioner must establish eligibility at the time of filing" and that "a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts")

The Petitioner has not established proper grounds for reconsideration. Our prior decision properly analyzed the Petitioner's assertions. The Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; the motion must demonstrate how we erred as a matter of law or policy. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party seeks reconsideration by generally alleging error in the prior decision).

Since your brief does not establish that our decision on appeal was based on an incorrect application of law or policy, nor is it supported by any relevant caselaw, statute, or regulation, your motion to reconsider must be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.