U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36470088

Date: FEB. 24, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a fashion communication specialists, seeks employment-based second preference (EB-2) 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 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 that the Petitioner had not established 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). 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).

The Petitioner proposes to work as a communication specialists in the fashion industry. In our decision dismissing the appeal, we explained how the Petitioner failed to demonstrate his eligibility for the underlying EB-2 classification as a member of the professions holding an advanced degree and the national interest waiver.

On motion to reopen, the Petitioner contends that we failed to consider the totality of the evidence on record and disregarded evidence demonstrating his eligibility as an advanced degree professional and his proposed endeavor's national importance. In support of his motion, the Petitioner submits a brief and an updated academic evaluation along with previously provided documents. The evaluation reiterates the same information as the previous evaluation but omits the statements we highlighted, which discussed the Petitioner completing coursework in general studies. The Petitioner maintains

that his record establishes his eligibility for the EB-2 classification and the proposed endeavor's national importance.

In our appellate decision, we noted that the Director did not address whether the Petitioner had established eligibility for the underlying EB-2 classification. However, we conducted a full analysis of the Petitioner's eligibility for the EB-2 classification. Specifically, we highlighted concerns with the Petitioner's academic evaluation and transcript, which indicate that the Petitioner completed three academic years. This differs from a U.S. baccalaureate degree, which generally requires four years of education. *See Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977). Here, the Petitioner has not submitted any evidence or arguments that could be construed as "new facts" that were previously unavailable or undiscoverable to establish his eligibility for the EB-2 classification.

Similarly, in our appellate decision, although we reserved our discussion of the second and third prongs, we explained why the Petitioner failed to meet the first prong of the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). We determined the Petitioner had not sufficiently demonstrated that his specific endeavor would have broader implications for his field, the U.S. economy, or societal welfare. Our focus in considering national importance is not on the industry itself; instead, we focus on "the specific endeavor that the foreign national proposed to undertake." *Id.* at 889. In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Id.* In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects." *Id.* at 890. As noted by the Director, and affirmed in our prior decision, the record does not show that the Petitioner's specific proposed endeavor's impact stands to sufficiently extend beyond his prospective partnership businesses to impact the fashion industry field, the U.S. economy, or societal welfare at a level commensurate with national importance. Although we acknowledge the Petitioner's brief and additional documents, the Petitioner has not established new facts relevant to our appellate decision that would warrant reopening of the proceedings.

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 disagrees with our decision and contends that we used an "incorrect and stricter than required standard" when evaluating his eligibility for the underlying classification and the national interest waiver. He further argues that we abused our discretion by not taking precedent decisions into account. Except where a different standard is specified by law, a petitioner must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Chawathe*, 25 I&N Dec. at 375-76. Under the preponderance of the evidence standard, the evidence must demonstrate that a petitioner's claim is "probably true." *Id.* at 376. Here, the Petitioner does not sufficiently explain how our previous decision applied an incorrect and stricter standard of proof.

Furthermore, although the Petitioner contends that we failed to consider precedent decisions, the Petitioner only mentions *Dhanasar*.[1] The Petitioner states: "As in *Matter of Dhanasar*, [the Petitioner] submitted opinions from independent experts holding senior positions in academia and industry that describe the importance of his proposed endeavor and, more broadly, the benefits of his work for the United States." In *Dhanasar*, "[t]he petitioner submitted probative expert letters from individuals holding senior positions in academia, government, and industry that describe the importance of hypersonic propulsion research as it relates to U.S. strategic interests." *Dhanasar*, 26 I&N Dec. at 892. In addition, the petitioner "provided media articles and other evidence documenting the interest of the House Committee on Armed Services in the development of hypersonic technologies and discussing the potential significance of U.S. advances in this area of research and development." *Id.* Here, the Petitioner has not established that the facts of the instant petition are analogous to those in the *Dhanasar* precedent decision. For example, unlike the scientific researcher in *Dhanasar*, the Petitioner has not demonstrated that his proposed endeavor offers broader implications in his field.

The Petitioner has not established that our 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. The motion to reconsider must therefore be dismissed.

The Petitioner has not established facts relevant to our appellate decision that would warrant reopening of the proceedings, nor has he shown that we erred as a matter of law or USCIS policy. Consequently, we have no basis for reopening or reconsidering our prior decision. Accordingly, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and his underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[1] Our appellate decision specifically considered the Petitioner's eligibility under the *Dhanasar* analytical framework's first prong.