U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36050201

Date: FEB. 26, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a market research analyst and financial analyst, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to the 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 although the Petitioner is a professional holding an advanced degree, he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) (providing a framework for adjudicating national interest waiver petitions).[1] The Director determined that the Petitioner's proposed endeavor has substantial merit and that he is well-positioned to advance the proposed endeavor. However, the Director determined that the Petitioner did not establish that the proposed endeavor is of national importance, and that, on balance, it would benefit the United States to waive the job offer requirement. We dismissed a subsequent appeal concluding that the Petitioner had not demonstrated that his proposed endeavor was of national importance.[2] 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

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

[2] We reserved our decision on whether the Petitioner had established eligibility under *Dhanasar's* third prong. *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 the applicant did not otherwise meet their burden of proof).

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.

As stated above, a motion to reopen must state new facts and be supported by documentary evidence. Here, the Petitioner provides no new facts or supporting documentation. In the Petitioner's brief, he contends that he already submitted sufficient evidence to demonstrate his eligibility for a national interest waiver of the job offer requirement. The brief, however, does not provide any new facts as to how the Petitioner is eligible for a national interest waiver. Additionally, the Petitioner has not provided documentary evidence in support of any new facts. 8 C.F.R. § 103.5(a)(2). The Petitioner's submission, therefore, does not meet the requirements of a motion to reopen.

On motion to reconsider, the Petitioner contests the correctness of our prior appellate decision and suggests an incorrect application of law and policy. In support of the motion, the Petitioner relies on a misplaced understanding of the final merits determination in the EB-2 context. Further, the Petitioner contends that we did not provide a "thorough explanation of the specific reasons for the denial" on appeal. Next, the Petitioner asserts we erroneously applied *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm'r 1971) and *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). Finally, the Petitioner contends that we erroneously concluded that the Petitioner did not establish eligibility under *Dhanasar's* third prong.

Initially, the Petitioner's argument that we should have performed a final merits determination is unsupported by the record or case law. A final merits determination occurs as step two in the EB-2 exceptional ability context. A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[3] Meeting at least three criteria, however, does not, in and of itself, establish exceptional ability. *See generally* 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual. If a petitioner meets three of six criterion, we will then, as step two, conduct a final merits determination to decide whether the evidence in its totality shows that the petitioner "has demonstrated that the beneficiary has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." *Id., see also* Section 203(b)(2)(A) of the Act. Here, because the Director determined that the Petitioner was an advanced degree professional, and we did not disturb that decision on appeal, there was no need to determine if the Petitioner met the exceptional ability standard and conduct a final merits determination before moving on to consider the three prongs under *Dhanasar*. *Matter of Dhanasar*, 26 I&N Dec. at 889. Thus, Petitioner's argument is without merit.

Next, the Petitioner argues that we did not provide a thorough explanation for our dismissal of his appeal. The record does not support the Petitioner's assertion. We dismissed the Petitioner's appeal because we concluded that the evidence did not demonstrate the national importance of the proposed endeavor. The first prong of the *Dhanasar* framework, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Id.* The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology,

[3] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

culture, health, or education. *Id.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

In our decision, we determined that the Petitioner's new business plan submitted on appeal presented a new set of facts regarding his proposed endeavor. We concluded that the new business plan materially changed the Petitioner's proposed endeavor. For instance, we determined that the Petitioner provided evidence with his initial filing that showed he would work as a financial development director for a company. Yet, the Petitioner's new plan submitted on appeal indicated he would open his own business which was not part of his initial endeavor. As a result, we concluded that the Petitioner had materially changed aspects of his proposed endeavor and that endeavor's activities. We cited to 8 C.F.R. § 103.2(b)(1), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm'r 1971) and *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998) for the proposition that a petitioner may not make material changes to a petition that has already been filed in an effort to make a deficient petition conform to USCIS requirements.

Because we determined the new business plan was a material change, we reviewed the Petitioner's initial materials to determine whether his proposed endeavor demonstrated the requisite level of national importance. In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the "specific endeavor that the foreign national proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. Further, "we look for broader implications" of the proposed endeavor beyond those that would directly impact the petitioner, his clients, and suppliers.

On review of the Petitioner's evidence, we concluded that it did not sufficiently demonstrate that his endeavor would have a broader impact beyond the organizations and clients he would serve. Further, we determined that the Petitioner's proposed work would not have sufficiently broad implications in market research or financial industries. Likewise, we concluded that the evidence did not show that the Petitioner planned to introduce novel methodologies or techniques that might be disseminated to others operating in the field or otherwise articulate how he would contribute to research and development in the market research and financial industries as a whole. We will not disturb our previous decision. We considered and analyzed the evidence before us under the preponderance of the evidence standard and found it insufficient to demonstrate eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76.

Next, the Petitioner argues that we erroneously applied *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm'r 1971) and *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). The Petitioner contends that these cases "address issues related to employment-based immigrant petitioners where visa priority dates and qualifications at the time of filing are of primary concern." Further, the Petitioner argues that "the EB-2 NIW framework" under *Dhanasar* "focuses on the future proposed endeavor."

We disagree. We concluded that the Petitioner had materially changed his proposed endeavor in submitting a new business plan on appeal. Because the Petitioner must meet eligibility requirements at the time of filing, we cited to *Matter of Katigbak* and *Matter of Izummi*. Both cases stand for the proposition that a petitioner must show eligibility for the benefit sought at the time of filing. The Petitioner points to no caselaw or other authority for the proposition that *Matter of Katigbak* and

Matter of Izummi are inapplicable in the national waiver context. Further, the regulation at 8 C.F.R. § 103.2(b)(1) states that a petitioner "must establish" eligibility for a benefit "at the time of filing and must continue to be eligible through adjudication." The Petitioner does not address this regulation and points to no authority that would disturb our determination on appeal. 8 C.F.R. § 103.5(a)(3) (stating that a motion to reconsider must be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy).

Last, the Petitioner contends that we erred in not concluding that the Petitioner had demonstrated eligibility under *Dhanasar's* third prong. However, we reserved our decision on his eligibility under the third prong. Therefore, this argument is without merit.

The Petitioner has not submitted additional evidence in support of the motion to reopen. Therefore, 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 motion 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.