U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35585989

Date: JAN. 6, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, an English as a second language teacher, 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 the Petitioner did not establish the Petitioner qualified for the underlying visa classification, nor that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. Specifically, the Director found the Petitioner did not demonstrate his proposed endeavor has substantial merit and national importance; he is well-positioned to advance the endeavor; or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. We dismissed a subsequent appeal, concurring with the Director that the Petitioner had not demonstrated the national importance of his proposed endeavor and reserving our opinion as to whether the record establishes the remaining requirements of the analytical framework of *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). We dismissed a subsequent motion to reconsider, finding the Petitioner did not demonstrate we erroneously applied law or policy in dismissing his appeal. The matter is now before us on a second 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). 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. In support of the motion, the Petitioner relies on the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 144 S.Ct. 2244 (2024), in asserting *Dhanasar* is no longer controlling precedent. However, *Loper* overturned

Chevron USA v. Natural Resources Defense Council, 467 U.S. 837 (1984), in holding that federal courts do not need to defer to agencies' reasonable interpretations of ambiguous federal laws. While *Loper* impacts federal courts that review our interpretation of ambiguous statutes, it does not modify our own adjudication of immigrant petitions and related national interest waivers.

The Petitioner also asserts our decision was contrary to the Administrative Procedures Act (APA). Citing to 5 USC Section 706, the Petitioner claims "USCIS' decision through the Administrative Appeals Office" is arbitrary and capricious; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or "unwarranted by the facts to the extent that the facts are subject to review to trial de novo by the reviewing court." The Petitioner does not clarify whether he believes our prior decision on appeal or on motion to be contrary to the APA. However, he does refer to the Director's petition denial and our dismissal of his appeal in asserting we "arbitrar[ily] and capricious[ly]" "misapplied *Dhanasar*." As stated, our review on motion is limited to reviewing our latest decision. The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). And the Petitioner's arguments related to the Director's decision and our dismissal of his appeal do not constitute the latest decision in the proceeding. Similarly, on previous motion, we properly considered only the correctness of our appeal decision, rather than considering the original petition evidence submission de novo as we did on appeal. The Petitioner's additional contentions on current motion reargue facts and issues we have already considered in our previous decisions. *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"). We will not re-adjudicate the petition anew.

As the Petitioner has not established that we erroneously applied law or policy in dismissing his previous motion to reconsider, he has not established this motion satisfies the requirement for a motion to reconsider under the regulations.

ORDER: The motion to reconsider is dismissed.