U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36028131

Date: JAN. 10, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, an industrial and refrigeration maintenance technician, 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 the Petitioner qualified for EB-2 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 a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider.

On motion, the Petitioner states that we did not consider all the evidence that he had submitted with the petition, in response to a request for evidence, and on appeal. He asserts that "the decision made did not consider the evidence presented and the impacts that my company can bring to the United States" and asks, "to have the decision reviewed."

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.

I. LAW

A motion to reconsider is based on an incorrect application of law or policy, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). In addition, 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).

II. ANALYSIS

The Petitioner proposes to continue his work as an industrial and refrigeration maintenance technician. The Director denied the petition, concluding that the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree but that he had not met the three prongs of the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). We dismissed the appeal, agreeing with the Director's determination that the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree but finding he did not meet *Dhansar's* first prong.[1] We reserved argument on the second and third prongs.[2]

A. Motion to Reopen

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The Petitioner states no new facts on motion, and submits no new supporting evidence. Therefore, the motion does not meet the requirements of a motion to reopen. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

B. Motion to Reconsider

A motion to reconsider must establish 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 proceeding at the time of the decision. 8 C.F.R. § 103.5(a)(3). On motion, the Petitioner restates and describes the evidence he submitted in support of his claims of the national importance of his proposed endeavor.

The only decision properly before us on motion is our August 2024 appellate decision, not the Director's February 2024 denial of the petition. *See* 8 C.F.R. § 103.5(a)(1)(i), which limits the available time to file a motion to reconsider and requires that motions pertain to "the prior decision," which in this case is our August 2024 appellate decision.

In our appellate decision, we referred to the Petitioner's arguments and quoted from his business plan, which indicated his intention to work as an industrial and refrigeration maintenance technician to help businesses optimize operations and experience growth; design and implement maintenance routines customized to the industry for a wide range of enterprises; and train and manage maintenance teams. We concluded:

> [T]he Petitioner has not demonstrated that his work would extend beyond individual companies to impact the maintenance industry more broadly. *See id.* at 889 (explaining "we look for broader implications"). [He] claims he will create jobs and impact the United States economy. He states he intends to hire one part-time employee this year and employ up to three employees next year. He also describes his recent assembly of

[1] The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Dhanasar*, 26 I&N Dec. at 889. The Director determined, and we agreed, that the Petitioner established the substantial merit of his proposed endeavor but not its national importance.

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make "purely advisory findings" and decisions unnecessary to the ultimate decision).

a cold storage facility located in a Hub Zone, a project which directly and indirectly employed 21 people. The Petitioner states his company "is located in a poor area" and he intends to generate technical jobs. The Petitioner did not submit evidence of his company's location in an economically depressed area. Even if he had submitted such evidence, the employment of one to three individuals does not demonstrate significant potential to employ United States workers.

The Petitioner further claims that heating, ventilation and air conditioning (HVAC) significantly contribute to the U.S. economy and by ensuring efficient and reliable HVAC operations, he contributes to the functioning of essential facilities and services. The Petitioner did not submit documentation of cost-saving projections or other evidence that his work would have a substantial positive economic effect beyond reducing costs for individual companies. *See id.* at 890 (discussing significant potential to employ United States workers and other substantial positive economic effects as indicative of national importance).

We also acknowledged his submission of supporting evidence including articles and documentation on President Biden's Executive Order catalyzing America's clean energy economy through federal sustainability, President Biden's actions to spur clean energy manufacturing, a Department of Energy proposed rule on the energy conservation program, Seasonal Energy Efficiency Ratio (SEER) ratings, an Environmental Protection Agency proposed rule on the phasedown of hydrofluorocarbons, 2023 HVAC regulation changes, the worldwide HVAC industry, and refrigeration and food safety.

We found that this information attests to the importance of clean energy, the HVAC industry, and refrigeration and food safety, but noted that our assessment of national importance does not focus on the importance of issues affecting an industry or our nation in general, but "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. We noted that none of the articles mention the Petitioner and they do not demonstrate the potential prospective impact of his proposed endeavor. *See id.* (explaining we consider the proposed endeavor's potential prospective impact when assessing national importance).

We further examined a submitted letter from A-A-, Adjunct Professor at [redacted] expressing his opinion that the Petitioner qualifies for a national interest waiver and discussing how industrial production and manufacturing contribute to the economy and concluding that in "this context, [the Petitioner] would be contributing to U.S. companies' revenue and cost reduction, job creation, and the nation's infrastructure." We found that A-A- does not explain, however, how the Petitioner's work would extend beyond his individual clients to impact his field more broadly on a level commensurate with national importance. *Cf. id.* at 892 (stating *Dhanasar* submitted probative expert letters describing the importance of his specific research as it related to U.S. strategic interests).[3]

For all of the above reasons, we concluded the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his clients to impact his field more broadly in a manner

[3] We also determined that additional letters from employers and colleagues attesting to the Petitioner's expertise and accomplishments and expressing confidence in his ability to succeed in the United States do not address his proposed endeavor and are more relevant to the second *Dhanasar* prong, in which we determine if a petitioner is well-positioned to advance their proposed endeavor.

indicative of national importance, because the Petitioner has not established that his proposed endeavor has significant potential to employ United States workers, would have other substantial positive economic effects, or would otherwise impact his field more broadly in a manner indicative of national importance.

On motion, the Petitioner does not address our specific determinations and conclusions or establish that they were in error. The Petitioner makes vague and general assertions that our appellate decision "did not consider the evidence presented and the impacts that my company can bring to the United States." Such assertions do not establish that our appellate decision was incorrect. The Petitioner does not, for instance, identify any specific documents or other pieces of evidence that we overlooked in our appellate review of the record and explain how discussion or consideration of those materials would have changed the outcome of our August 2024 decision.

Because the Petitioner has not identified any erroneous application of law or policy, the motion does not meet the requirements of a motion to reconsider under 8 C.F.R. § 103.5(a)(3), and must be dismissed. Disagreeing with our conclusions without showing that we erred as a matter of law or pointing to policy that contradicts our analysis of the evidence is not a ground to reconsider our decision. *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 may submit, in essence, the same brief and seek reconsideration by generally alleging error in the prior decision). Here, the Petitioner did not demonstrate that we erred in either misapplying law or policy or failing to address prior arguments or evidence. We addressed the Petitioner's prior arguments in our earlier decision, and the Petitioner's repetition of the same arguments does not show proper cause for reconsideration. For these reasons, we will dismiss his motion to reconsider. 8 C.F.R. § 103.5(a)(4).

III. CONCLUSION

The Petitioner has not shown proper cause for reopening or reconsideration and has not overcome the grounds for dismissal of the appeal. The Petitioner has not provided new facts supported by affidavits or other documentary evidence to meet the requirements for a motion to reopen. He has also not demonstrated, as supported with any pertinent precedent decisions, that our prior decision was incorrect based on the evidence in the record at the time of our decision to satisfy the requirements for a motion to reconsider. Therefore, we will dismiss the motions. We affirm our previous determination that the Petitioner has not established eligibility under the first prong of the *Dhanasar* analytical framework, and is thus not eligible for and does not merit a national interest waiver. While he also asserts on motion that he meets the second and third *Dhanasar* prongs, we will continue to reserve those issues.[4]

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[4] *See INS v. Bagamasbad*, 429 U.S. at 25-26.