U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29733652

Date: JAN. 23, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, describing himself as an entrepreneur in the textile, air cargo, and craft/floral industries, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or an individual of exceptional ability, 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 did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner later filed an appeal that we dismissed. 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.

In our decision dismissing the Petitioner's appeal, we determined the Petitioner did not demonstrate that the potential prospective impact of his proposed endeavor rose to the level of national importance.[1] We stated the submitted evidence was largely not relevant to the Petitioner's specific endeavor and emphasized he did not sufficiently articulate his specific intentions in the United States. We concluded that the Petitioner's assertions with respect to national importance were too general and only vaguely focused on his own prospective importing and exporting activities. We further discussed the Petitioner's business plan and its revenue and hiring projections and determined that he provided insufficient objective evidence to support how his proposed business's growth projections would be realized. We also reasoned that the Petitioner did not substantiate the source of his investments beyond speculating that profits from the company would be invested into the company. We concluded the

[1] 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 "the specific endeavor that the foreign national proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. 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, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id*. at 890. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work.

Petitioner's unsupported statements were insufficient to meet the burden of proof and he had not demonstrated that the proposed endeavor had significant potential to employ U.S. workers or otherwise offer substantial positive economic benefits for the United States. In sum, we determined that the Petitioner did not demonstrate the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

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.

As discussed, in our prior decision we determined that the Petitioner had not established the national importance of his proposed endeavor. In the motion to reopen the Petitioner references previously submitted evidence offering the same or similar arguments that we already considered and discussed in our previous decision. Here, the Petitioner submits no new facts or documentary evidence in support of the motion to reopen. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). For this reason, the motion to reopen must be dismissed.

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).

As a preliminary matter, the Petitioner alleges in the motion brief that his documents "were not properly analyzed by the Service, violating the Fourth Amendment of the Constitution of the United States of America." The Fourth Amendment in part prohibits "unreasonable searches and seizures." U.S. Const. amend. IV. We conclude the Petitioner's citation to the Fourth Amendment is not relevant to the matter at hand as he has not explained *how* we violated his Fourth Amendment rights in dismissing his appeal. Citing to an authority that is not relevant to the grounds of the unfavorable decision will not meet the requirements of a motion to reconsider. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("A motion to reconsider is not a mechanism by which a party may file a new brief before the Board raising additional legal arguments that are unrelated to those issues raised before the Immigration Judge and on appeal.").

The Petitioner further contends that it established sufficient investment in the proposed endeavor based on a $300,000 initial investment, as discussed in the business plan, as well as reinvestment of its projected profits in ensuing years. The Petitioner states that the business plan reflects a methodology "which proposes to show the [Petitioner's] skills and ability to achieve (through their CV) as well as the coherence of the proposal with the skills and experiences of the proponent, acquired over time, which is, in itself, evidence of the likelihood of the proposal succeeding." The Petitioner further emphasizes that his company's growth will cover "other HUB Zones in the region where it operates and, eventually, in other states." In addition, the Petitioner points to "an algorithm" discussed in its business plan and asserts that this supports his company's revenue and hiring projections.

In addition, the Petitioner emphasizes his skills and experience on motion, pointing to his resume and asserting this as evidence of "the likelihood of the proposal succeeding." However, the Petitioner's knowledge, skills, and experience relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue in our prior decision, and this is motion, is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong. Therefore, we do not find the Petitioner's emphasis on his skills and experience on motion relevant to establishing the national importance of his proposed endeavor or overcoming our prior decision.

The Petitioner also did not directly address certain determinations in our prior decision, namely that the submitted evidence was largely not relevant to the Petitioner's proposed endeavor, that he did not sufficiently articulate his specific intentions in the United States, and that his assertions with respect to national importance were too general, vaguely focused on importing and exporting. For instance, the Petitioner ambiguously asserts that he is an entrepreneur in several different industries, including the textile, air cargo, and craft/floral industries. The Petitioner provides little on motion to clarify this ambiguity. The Petitioner must resolve ambiguity in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, the Petitioner does not sufficiently explain and document how his business plans would have a potential prospective impact on a national level. In fact, as noted in our prior decision, the Petitioner did not, and still does not, describe with sufficient detail the nature of the goods and services his company would provide. The Petitioner further emphasizes that his company would open locations in Hub Zones, further benefiting U.S. economic development, and points to an algorithm he formulated that demonstrates the likelihood of the proposed endeavor's success. However, we are not analyzing the likelihood that the Petitioner's proposed endeavor would have to succeed, even if this was properly articulated and documented, but its prospective national importance. Further, it is not clear how an algorithm created by the Petitioner would represent objective evidence of the national importance of his proposed endeavor. The Petitioner has provided insufficient objective evidence to establish that his proposed endeavor would have a prospective potential impact on Hub Zones in the United States such that this would rise to the level of national importance. The Petitioner has not supported his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. In sum, the Petitioner's business plan does not demonstrate that his proposed endeavor would, more likely than not, have significant potential to employ U.S. workers or generate other substantial positive economic effects. *Id.*

The Petitioner has not established that our prior decision was based on an incorrect application of law or policy based on the evidence in the record of proceedings at the time of our decision. 8 C.F.R. § 103.5(a)(3). As such, the motion to reconsider must be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.