U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36268742

Date: JAN. 29, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, as well as a national interest waiver (NIW) 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), and dismissed two subsequent motions, concluding that the Petitioner did not qualify for classification as an individual of exceptional ability, and that he 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 an appeal ruling on the NIW issue and reserving our determination relating to exceptional ability. The matter is now before us on a combined motion to reopen and reconsider under 8 C.F.R. § 103.5. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motions.

I. LAW

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that USCIS may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

USCIS' decision to grant or deny an NIW is discretionary in nature. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, First, and D.C. Circuit Courts of Appeals, as well as the Third Circuit in an unpublished decision).

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). According to the Instructions for Notice of Appeal or Motion (Form I-290B, Notice of Appeal or Motion), any new facts and documentary evidence must demonstrate eligibility for the required immigration benefit at the time the application or petition was filed. A motion to reopen that does not satisfy the applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes within the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

A motion to reconsider must: (1) state the reasons for reconsideration, (2) be supported by any pertinent precedent decision to establish that our prior decision was based on an incorrect application of law or policy, and (3) establish that our prior decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider that does not satisfy these requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

In our decision on the Petitioner's appeal, while we acknowledged the Petitioner's claims are not entirely without any legal basis, we informed him that the status of an entrepreneur providing swimming pool management, installation, and automation services falls far short of the national importance required for a national interest waiver of the job offer. In other words, we notified him that his endeavor clearly fell outside the ambit of what might qualify for this petition.

Within the motions, the Petitioner addresses a certain aspect of his endeavor in which his automation efforts are but "an entry point to a more extensive plan centered on advancing automation and related technical services in various sectors, thereby underscoring the endeavor's wider scope and impact." But his motion brief doesn't expound on this concept any further, leaving us unable to adequately evaluate his claims in this area within the motion. Additionally, we discussed this in our appellate decision and the Petitioner does not specify in what way me might have erred in that determination.

Next, the Petitioner refers to our discussion of his business plan and its projections. In this motion, he indicates we should have elaborated on his projections and he is perplexed at what further information we might be seeking beyond what is already in the record. Revisiting our appellate dismissal, we note that we determined his projections in the business plan relating to both the projected jobs and revenues were not supported with material corroborating the need for additional employees, nor did he provide a basis or an explanation of how those future revenue projections would be achieved. In other words, the Petitioner did not provide adequate evidence, aside from claims in his business plan and his own statement, that his company's staffing levels and business activity stand to provide substantial economic benefits in Florida or the remainder of the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence but he has not done so here. *See Chawathe*, 25 I&N Dec. at 376.

Discussing some of the letters in the record, the Petitioner notes those from A-A-, D-P, and M-A-A- highlighted his potential to improve efficiency and cost savings, stimulate business growth and foster

advancements, and impact the broader economy and infrastructure.[1] While the Petitioner offers general assertions about these letters, he does not address the main shortcomings we noted within them. Specifically, our appellate decision reflected it is not the national importance of the field, industry, or profession in which the individual will work or the value of immigrant entrepreneurship in general that the support letters should exclusively focus on. Instead, we consider the "the specific endeavor that the foreign national proposes to undertake." *Dhanasar*, 26 I&N Dec. at 889. Continuing to focus on what the Petitioner would purportedly do, we further informed him these letters did not contain sufficient information and explanation, nor did the record include adequate corroborating evidence, to show that his specific proposed work would offer broader implications in his field or substantial positive economic effects for our nation, that rise to the level of national importance.

He also discusses the weight that opinion letters garner in these proceedings. As we noted above, our decision on the Petitioner's appeal explained the shortcomings associated with the letters in the record. It is not arbitrary or capricious to accord limited weight to opinion letters provided the agency considers them. It is unnecessary that the degree of the agency's weight accorded correlates with the weight in which the Petitioner bestows upon the letters, provided the agency considers the content and grants an appropriate value. *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134 (D.D.C. Dec. 16, 2013). When USCIS explains its reasoning, it is entitled to its own reasonable evaluation of an opinion letter. *Taylor Made Software, Inc. v. Cuccinelli*, 453 F. Supp. 3d 237, 248 (D.D.C. 2020) (citing *Sagarwala v. Cissna*, 387 F. Supp. 3d 56, 66 (D.D.C. 2019) ("USCIS could have, in its discretion, accepted [a] professional opinion, but, absent more support, the agency certainly was not required to."). A trier of fact is not required to interpret evidence in the manner a petitioner advocates. *Matter of M-D-C-V-*, 28 I&N Dec. 18, 32 (BIA 2020).

Next, the Petitioner argues his second business plan he submitted in response to the Director's request for evidence should have been considered as it clarified or elaborated on the original petition's details. The Director's original petition decision explained why the agency would not consider the second business plan, he did not mount a persuasive retort to that determination in his appeal brief and we explained why we would not consider it on appeal, and we face the same situation in this combined motion. As nothing has changed, we incorporate our previous decision to decline the Petitioner's request to consider the second business plan, but he is free to submit that second business plan with any new petition filing under this immigrant classification.

He then turns his attention to the same argument he presented in his appeal brief, that the Director mistook the requirements for this classification with another type, but our appellate analysis constituted a substantive assertion that his "work lacks sufficient innovation or industry impact, ultimately leading to a finding of ineligibility." He claims our determination was an error because we overlooked the fact that the Director's language implied a conclusion about the merits of his endeavor, effectively asserting the proposed work did not meet the threshold of national importance and that inclusion goes beyond identifying potential evidence types and instead serves as a decisive judgment on his eligibility. Because we addressed this same aspect in our decision on his appeal and he does not offer new facts supported by evidence, or detail how our prior decision was not only incorrect based on the evidence in the record at the time of the decision, but it was also based on an incorrect

[1] We utilized the initials of individual letter authors in our appellate decision, and we continue that practice here.

application of law or policy—while also supporting those allegations with any pertinent precedent decisions—we will not entertain these same arguments in this motion.

And finally, the Petitioner contends that our appellate decision not only misunderstood what his endeavor proposed to do (automation and technical services), but we also misapplied *Dhanasar's* requirements by requiring the endeavor's benefits to operate on a nationwide scale. But as the below quote from our decision on the appeal reveals, we adequately addressed both of these factors:

> While the Petitioner's statements reflect his intention to provide pool installation and automation services to his company's future clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact his field or industry, societal welfare, government initiatives aimed at fostering technology and sustainability, or the U.S. economy more broadly at a level commensurate with national importance.

So we fully considered his proposed endeavor and there is no indication that we required him to show the endeavor's benefits operated at a national level.

III. CONCLUSION

The Petitioner has not demonstrated that we should either reopen the proceedings or reconsider our decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.