U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35321188

Date: JAN. 30, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a chief executive officer (CEO) of a marketing business, 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 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 the Petitioner did not establish that the Petitioner qualified for EB-2 classification and that a discretionary waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed a subsequent appeal, concluding that the Petitioner had not established eligibility for a national interest waiver under *Dhanasar's* first prong. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] Specifically, we dismissed the appeal because we concluded that the Petitioner had not sufficiently explained and provided corroborating evidence of how his proposed endeavor would have broad implications rising to the level of national importance. The matter is now before us on a 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, the dismissal of the Petitioner's appeal. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

[1] Our determination regarding the Petitioner's eligibility under the first prong was dispositive. Therefore, in our decision, we reserved on the issues regarding the Petitioner's eligibility for EB-2 classification as well as the Petitioner's eligibility under *Dhanasar's* second and third prongs. *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).

On motion, the Petitioner contests the correctness of our prior decision.[2] In support of the motion, the Petitioner relies on USCIS Policy Memorandum 602-0005.1 and case law for the proposition that the standard of evidence is the preponderance of the evidence.[3] Further, the Petitioner contends that we wrongly assessed the evidence and should have found that the Petitioner's proposed endeavor was of national importance under the *Dhanasar* analytical framework's first prong. *Matter of Dhanasar*, 26 I&N Dec. 884, 889. The Petitioner emphasizes that we may have applied *Dhanasar* "too narrowly" in evaluating national importance. We disagree.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* at 889.

The Petitioner argues that his proposed endeavor, the operation of a digital marketing business, "will improve the competitive edge" of small businesses, "enabling them to grow, innovate, and expand their market reach, which will result in substantial economic benefits." Further, the Petitioner contends that his endeavor "has the potential to significantly influence thousands of small businesses across the country… directly supporting job creation and economic growth nationwide." To support his contentions, the Petitioner reviews industry data and cites to the Small Business Administration (SBA), Forbes, among other publications.

For instance, the Petitioner on motion submits an article from Forbes that points out that many small businesses are "overwhelmed by marketing" and that there is a "marketing knowledge gap." However, a general trend does establish the national importance of the Petitioner's proposed endeavor. The Forbes article is a general reference that does not address the Petitioner's endeavor or how a similar business to the Petitioner's would reach national importance under the *Dhanasar* framework. Further, the Petitioner filed a motion to reconsider. We will not consider new facts or evidence in a motion to reconsider. The Petitioner 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).

The Petitioner submits two support letters on motion. It is unclear why these letters could not have been submitted as part of the Petitioner's initial filing, in response to the request for evidence (RFE), or when he filed his appeal. Additionally, we note that the Petitioner filed a motion to reconsider. New letters would not demonstrate how our prior decision incorrectly applied law or policy. Even if we could consider the letters, the letters would be insufficient. The letter from D-S-, a state representative, states that the Petitioner's endeavor "can potentially help recent immigrants succeed in the job market." Yet, D-S- does not provide an explanation as to how the Petitioner's endeavor would have substantial positive economic effects or a significant potential to employ U.S. workers as

[2] We note that, on motion, the Petitioner contends that he has shown his eligibility for a national interest waiver under *Dhanasar's* second and third prongs. We reserved those issues on appeal and continue to do so here.

[3] *See* USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions: Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14, 21* (Dec. 22, 2010), https://www.uscis.gov/legal-resources/policy-memoranda.

contemplated by *Dhanasar*. Likewise, the letter from C-B-, praises the Petitioner for his participation in religious and social events but does not explain how the Petitioner's endeavor has national or even global implications.

Further, on motion the Petitioner submits an expert opinion letter from Professor [redacted] of [redacted]. As previously stated, this type of evidence does not show how we misapplied the law or policy at the time of our previous decision. Thus, even if we would consider the letter, it would not be sufficient to show how we erred. Professor [redacted] concludes that the Petitioner's proposed endeavor is of national importance because it "supports economic growth, workforce development, technological innovation, and fiscal sustainability." Professor [redacted] states that the Petitioner "aims to utilize his extensive experience and expertise in digital advertising and entrepreneurship to help small and medium-sized businesses." Yet, the Petitioner's abilities go to the second prong of *Dhanasar* regarding how well-positioned he is to advance his endeavor and not to whether the endeavor is of national importance. Professor [redacted] contends that the Petitioner's endeavor will "foster a more vibrant and dynamic economy," generate a "substantial number of direct and indirect job opportunities," increase tax revenues" and enhance societal welfare. Besides unsubstantiated assertions, Professor [redacted] does not specify how exactly these outcomes will be achieved.

As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we may give an opinion less weight if it is not in accord with other information in the record. *Id.* Even if we would consider this evidence, we would conclude that because the expert opinion lacks detailed analysis on exactly how the endeavor will be realized or reach the level of national importance as contemplated by *Dhanasar*, it is of less probative value.

Upon review of the Petitioner's brief, we find a marked similarity to the Petitioner's claims on appeal. The Petitioner claimed on appeal that the Director erroneously applied the preponderance of the evidence standard, and that the Director erroneously applied the *Dhanasar* analytical framework. The Petitioner's contentions in his current motion merely reargue facts and issues we have already considered in our previous decision. *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"). 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. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied. The motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.