U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 36661853

Date: JAN. 31, 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 either a member of the professions holding an advanced degree 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. We dismissed an appeal, a motion to reconsider, and a combined motion to reopen and reconsider. The matter is before us again on a motion to reopen.

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 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

In the initial filing, the Petitioner stated his proposed endeavor was to establish a company that would provide information technology (IT) consulting services to U.S. companies, including consultancy concerning cybersecurity and IT management and governance. The Director determined that, while the proposed endeavor had substantial merit, the Petitioner had not established its national importance under the first prong of the *Dhanasar* analytical framework.[1]

On appeal, we similarly concluded the Petitioner had not established the national importance of his proposed endeavor and thereby had not established his eligibility for a national interest waiver. As the issue was dispositive of the appeal, we reserved the Petitioner's remaining arguments with respect to *Dhanasar's* second and third prongs. In our dismissal of a subsequent motion to reconsider, we

[1] *See Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016).

addressed the Petitioner's arguments that we erred in our analysis on appeal and concluded that the Petitioner had not established the national importance of his proposed endeavor.

On a combined motion to reopen and reconsider, the Petitioner proposed an alternate endeavor. Because this proposal constituted a material change[2] to the petition and did not establish that he had satisfied all eligibility requirements throughout the adjudication process,[3] we did not consider evidence related to the new endeavor. The Petitioner did not provide new facts relevant to the prior decision that would warrant reopening the proceedings,[4] nor did he allege that we erred as a matter of law or policy in our prior decision or that the decision was incorrect based on the evidence in the record of proceedings at the time.[5] As we had no basis for reopening or reconsidering our decision, we dismissed the motions.[6]

On the current motion to reopen, the Petitioner submits documentation concerning the effects of custom consultation services provided by IT consultants, as well as information about the IT industry in general. The Petitioner asserts that this material constitutes new facts that establish the national importance of his initial proposed endeavor to operate an IT consultancy company.[7] However, 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). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the combined motion to reopen and reconsider—a decision which was based on a material change to his proposed endeavor. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion due to the material change.

Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

**ORDER:** The motion to reopen is dismissed.

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[2] *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1988).
[3] *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).
[4] *See* 8 C.F.R. § 103.5(a)(2).
[5] *See* 8 C.F.R. § 103.5(a)(3).
[6] *See* 8 C.F.R. § 103.5(a)(4).
[7] We note that this material does not establish that the Petitioner's initial endeavor is of national importance but instead provides general information about the field in which he originally intended to work.