U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30992905

Date: JUL. 1, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an engineer that will provide consulting services in areas of electrical engineering and technical sales, seeks classification as a member of the professions holding an advanced degree and as an individual of exceptional ability in the sciences, the arts, or business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding the record did not establish the Petitioner's eligibility for a national interest waiver under the *Dhanasar* framework. We dismissed a subsequent appeal. 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 motion.

The Director determined that the Petitioner had not met the three prongs of the framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). We dismissed the appeal, affirming the Director's determination about the first *Dhanasar* prong and reserving argument on the additional prongs. We also concluded that the Petitioner had shown eligibility for the underlying EB-2 classification, an issue that the Director had not addressed in the denial decision. On motion, the Petitioner asserts that he meets the *Dhanasar* requirements for the national interest waiver.

A. Motion to Reopen

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).

On motion, the Petitioner contends that the "AAO has, in part, issued a boilerplate decision in critical matters, thus meriting a reopening of the matter at hand." However, upon review of the AAO decision, we discussed the Petitioner's qualifications and experience, as well as specifically referenced and analyzed the business plan, his personal statement, policy guidance, and an expert opinion letter. Although the Petitioner states we issued a boilerplate decision, he does not identify what specific content the AAO failed to consider or how the record contains evidence that overcomes the analysis and findings in our decision. Therefore, we do not find support for the Petitioner's assertion that the AAO did not issue a thorough decision.

On motion, the Petitioner submits supplemental documentation and asserts that these new facts provide further detail on the projections outlined in the Petitioner's business plan for the proposed endeavor. As noted in our appellate decision, the Petitioner's business plan provides figures that are not suitably supported by relevant data and analysis specific to the Petitioner's proposed endeavor, and do not sufficiently demonstrate the claimed substantial positive economic effect.

Upon review of the updated documentation for the Petitioner's business plan submitted on motion, the information reiterates the sales forecast for the proposed business from year one to year five and indicates that the company's sales will be primarily achieved through substantial investment in sales and marketing. The supplemental business plan also notes that the company will achieve revenues each year due to its many competitive advantages, including the Petitioner's professional expertise, qualified personnel, diversified marketing strategies, and personalized approach. In addition, the documentation indicates that the Petitioner's company will employ 15 individuals by the end of year five, which will expand the services provided by the company and create revenue growth and profitability. The updated business plan provides an outline of when the 15 employees will be hired and the duties for each position.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of the work. *Id.* at 889. Here, the Petitioner did not demonstrate how the business would largely influence the field and rise to the level of national importance. In *Dhanasar*, we determined 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. The record does not show through supporting documentation how the Petitioner's endeavor of operating a consulting company sufficiently extends beyond his prospective customers and employees to impact the field or the U.S. economy more broadly at a level commensurate with national importance.

Although the Petitioner states that the supplemental business plan provides further details regarding the sales and personnel projections, it appears the information is similar to the original business plan and provides only general statements on how these projections were developed but does not provide sufficient information of the specific proposed endeavor. Moreover, the Petitioner did not demonstrate how his business plan's claimed revenue and employment projections, even if credible or plausible, have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Although the business plan forecasts total sales of $200,200 in the first year and $846,405 by the fifth year, the Petitioner did not establish the significance of this data to show that the benefits to the regional or national economy would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Similarly, even though the business plan

claims the creation of 15 jobs by the end of year five, with payroll expenses totaling $571,236 in the fifth year, the Petitioner did not demonstrate the relevance of these numbers and show that such future staffing levels would provide substantial economic benefits to the regions in which he intends to focus with the expansion plans, or the U.S. economy more broadly, at a level commensurate with national importance. The Petitioner, for instance, did not establish that such employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally. For all these reasons, the record does not demonstrate that, beyond the limited benefits provided to its prospective clients and employees, the Petitioner's proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

B. Motion to Reconsider

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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner contests the correctness of our prior decision and asserts that we denied him due process. The Petitioner asserts he was unaware of derogatory information stated in the decision and was not afforded the opportunity to rebut this information when our decision concluded that the Petitioner's business plan provides "no basis" for the hiring projections. The regulation at 8 C.F.R. § 103.2(b)(16)(i) provides that if the decision will be unfavorable to the petitioner and is based on derogatory information considered by USCIS of which the petitioner is unaware, the petitioner shall be advised of this fact and offered an opportunity to rebut the information before the decision is rendered. However, the conclusion regarding the Petitioner's business plan is not derogatory information that was found outside of the record of proceedings. The statute does not purport for the AAO to send out notice for every single deficiency found in the record when the Petitioner must establish statutory eligibility requirements for a national interest waiver. The Petitioner must establish eligibility at the time of filing the immigrant visa petition and must continue to be eligible for the benefit through adjudication. 8 C.F.R. § 103.2(b)(1).

Further, although the Petitioner states he was unaware of the deficiencies outlined in the appellate decision, his statements in response to the Director's notice of intent to deny (NOID) seem to indicate otherwise. In response to the NOID, the Petitioner summarized the NOID as follows:

> The USCIS furthermore claims that the record falls short of establishing the national importance of [the Petitioner's] proposed endeavor. Specifically, it claims that the petitioner presented no financial proof or other evidence in the record to explain and demonstrate how his proposed endeavor will happen and eventually extend beyond a specific organization and its clients such as to impact the industry or field more broadly. It also claims that the petitioner failed to demonstrate that his proposed endeavor has national or even global implications with a particular field or industry. Finally, it states that he has not demonstrated that his specific endeavor has significant potential to

> employ U.S. workers or otherwise offers substantial positive economic effects for our nation.

Thus, the Petitioner was aware that USCIS requested evidence to corroborate claims regarding the proposed endeavor's financial projections and claims of national importance.

On motion, the Petitioner also asserts that we erred by requiring evidence that the proposed endeavor should prove to generate such a significant number of jobs that it will be tantamount to a substantial economic effect for a given region. The Petitioner does not cite any passage from our appellate decision in which we required the Petitioner to establish both types of benefit to the United States. Nevertheless, the record shows that the Petitioner did argue both job creation and wider impact on the field as grounds for his national interest waiver claim.

With regard to job creation, the Petitioner argues that the evidence need only show that the endeavor has significant potential to employ U.S. workers, not that it was going to generate employment to such a degree that the Service would find it imparts a substantial positive economic benefit. Here, the Petitioner appears to argue that the likelihood of employing U.S. workers ought to be a strong positive factor, regardless of the number of workers thus employed. But *Dhanasar* does not state that an intention to employ U.S. workers presumptively shows the national importance of a proposed endeavor. Rather, it refers to "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects." *Matter of Dhanasar*, 26 I&N Dec. at 890. This phrasing shows that "a significant potential to employ U.S. workers" is one example of various types of "substantial positive economic effects."

In *Dhanasar*, we observed:

> The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore . . . a given petitioner . . . cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his field of expertise.

Id. at 886 n.3. The same logic applies when discussing the potential benefit that a given individual offers to the United States. By statute, EB-2 classification is intended for those who "will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States." Section 203(b)(2)(A) of the Act. But individuals offering this substantial prospective benefit are presumptively subject to the statutory job offer requirement.

On appeal, the Petitioner states that his company's employment of 15 people is above average in the United States since the IBISWorld Industry report indicated that the average number of employees per company in the Electrical Engineering Services Industry in the United States is seven employees. However, this article is general in nature and does not involve the Petitioner and his proposed endeavor. The Petitioner did not explain that the companies studied to report the projections in the IBISWorld report are like the Petitioner's proposed endeavor in order to make such a comparison.

On motion, the Petitioner also stated that our decision limits the Petitioner to a "salesman" when he is in fact intending on conducting research, advancing technologies, and transferring best practices between that of the United States and Latin America. However, our appellate decision never refers the Petitioner as a salesman. The Petitioner also claims that we erred when we stated that the Petitioner does not propose to conduct research or advance technologies in the field of electrical engineering, but to serve as a consultant and sales engineer to help businesses to upgrade or replace electrical machinery. He said his personal statement indicated that he will "strive to set industry standards through research, innovation, and safety, and will continually improve my products and processes to keep both clients and employees engaged, trained and environmentally compliant." We recognize the Petitioner's general statements of setting industry standards, but the evidence does not sufficiently demonstrate that the Petitioner's specific undertaking stands to have an impact beyond the organizations and clients he would serve, or that his proposed work would otherwise have broader implications for the electrical engineering industry or initiatives. For example, the record does not establish the Petitioner has plans to introduce novel methodologies or techniques that may be disseminated to or adopted by others operating in the field or industry, or otherwise articulate how he will contribute to research and development of our nation's electrical engineering services.

The Petitioner also states that AAO erred when it stated that the expert opinion letter from Dr. [redacted] a professor at [redacted] who opined on his eligibility for a national interest waiver, does not sufficiently explain any substantial positive economic effects of the Petitioner's specific proposed endeavor. Although Dr. [redacted] indicated that the Petitioner's proposed endeavor will "help provide direct and indirect jobs to American citizens, aiding its initiative to support its workers," he did not provide sufficient evidence of how he came to this conclusion. On motion, the Petitioner contends that Dr. [redacted] is "clearly referring to 207.6 total indirect jobs according to the multipliers provided by the Economic Policy Institute as well as the total tax payment of $129,293 by Year 5 of the endeavor's operation," as well as other information found in the business plan. However, we noted that there is a lack of clarity in parts of the business plan that can affect the findings found by Dr. [redacted] in his opinion letter. The business plan stated several general statements and lacked corroborating evidence to establish the claims. The Petitioner does not refute the conclusions in the appellate decision in which we specifically addressed that letter. 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 decision. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006).

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, 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. Therefore, we will dismiss the motion. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.