U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31522992

Date: JULY 5, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an information technology entrepreneur, seeks employment-based second preference (EB-2) classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, 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 qualified for classification as a member of the professions holding an advanced degree, but 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 a subsequent appeal. 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. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver of the job offer, and thus the labor certification, to a petitioner classified in the EB-2 category if the petitioner demonstrates that (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) the noncitizen is well positioned to advance the proposed endeavor; and (3) that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner submits a brief with no new evidence and asserts that our prior decision "misquotes the entirety of the [*Dhanasar*] standard." The Petitioner further contends that we limited our national importance review by excluding certain words from *Dhanasar's* broader implications analysis. In particular, the Petitioner argues that our national importance review focused on the proposed endeavor's effect on medium-sized to large enterprises instead of its impact on the fields of information technology (IT) and cybersecurity. We disagree.

Contrary to the Petitioner's assertions, we considered the claimed broader implications within the particular field and agreed with the Director that the record did not adequately demonstrate that these benefits would rise to the level of national importance. In dismissing the appeal, we acknowledged the Petitioner's proposed endeavor to form an IT consulting firm named [redacted] in order to provide medium-sized to large enterprises with comprehensive IT management and governance solutions including cybersecurity services, IT strategy assessments, IT governance policies, project management methodologies, IT portfolio management, and overseeing IT project implementation as well as budgeting, forecasting, planning, execution, and performance management. Similarly, we acknowledged the Petitioner's evidence including his business plan, recommendation letters, professional certificates and memberships, numerous articles relating to cybersecurity and information technology, job offer letter, company registration documents, academic records, and resume. We ultimately concluded that the record does not sufficiently explain how the Petitioner's cybersecurity services would "broadly implicate" the field of cybersecurity. We also explained that the record does not adequately support the Petitioner's assertion that his proposed endeavor in IT governance services will broadly implicate "matters in the field of IT governance as a whole."

The first prong, substantial merit and national importance, focuses on the specific endeavor the noncitizen proposes to undertake. Moreover, 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 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.

While the Petitioner claims that his proposed endeavor "carries significant national implications within the specific Information Technology and STEM fields—not just specific employers," our decision explained why the Petitioner failed to demonstrate the proposed endeavor's national importance as required by *Dhanasar*. And since the Petitioner's submission rests entirely upon the premise that it did not, it does not satisfy his burden.

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. Accordingly, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and his underlying petition remains denied.

ORDER: The motion to reconsider is dismissed.