U.S. Citizenship and Immigration Services

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

In Re: 31286474

Date: JUL. 8, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, general manager of a private country club, seeks classification as a member of the professions holding an advanced degree or of exceptional ability, pursuant to 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 employment based second preference (EB-2) 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. *See 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).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that he met the requirements for a waiver of the job offer and labor certification requirements for EB-2 classification. 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 motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

The Director determined that the Petitioner had not established the national importance of his endeavor to continue employment as the general manager of the [redacted], that he was well positioned to advance the proposed endeavor, or that it was in the best interest of the United States to waive the job offer and labor certification requirements for EB-2 classification in line with the three-part analytical framework outlined in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). On appeal, the Petitioner asserted eligibility and emphasized his positive track record as general manager of

[redacted] since 2018. In addition to agreeing with the Director that the Petitioner did not meet the three prongs of the *Dhanasar* framework, we concluded that the Petitioner had also not established underlying eligibility for EB-2 classification as a member of the professions with an advanced degree because he had not provided sufficient evidence that the positions he held following his bachelor's degree amounted to five years of progressive experience in his field of media arts or that he was an individual of exceptional ability.

On motion, the Petitioner submits a brief discussing his eligibility, a letter of employment from S-S-[1], an executed contract between [redacted] a personal statement, and recommendation letters. The Petitioner asserts that these new facts establish eligibility, as they overcome the stated grounds for denial in our appeal decision. In addition, the Petitioner contests the correctness of our prior decision and relies upon *Matter of Caron International Inc.* 19 I&N Dec. 791 (Comm. 1988). The decision in *Caron* analyzed a beneficiary's eligibility for non-immigrant classification under former section 101(a)(15)(H)(i)(a) of the Act. 8 U.S.C. § 1101(a)(15)(H)(i)(a).[2] Here, the Petitioner equates himself to the beneficiary in *Caron* as an individual who has taken a business that was struggling financially and made it profitable. The Petitioner contends that such a turnaround is an example of the Petitioner's exceptional ability.

In our prior decision, incorporated here by reference, we determined that the Petitioner did not provide sufficient evidence of 5 years of progressive experience in the field of media arts because his employment letter did not contain a description of his job duties as required by regulations. 8 C.F.R. § 204.5(g)(1). The job description is a critical component of determining whether a Petitioner has shown progressive experience in their field. On motion, the letter from S-S- provides the job title and dates of employment but does not provide a description of the Petitioner's duties with those organizations. Similarly, the recommendation letters provided on motion address the Petitioner's current role with [redacted] and his general demeanor in conducting business. Since the new evidence submitted on motion does not overcome the stated grounds for denial, the Petitioner has not established his eligibility for EB-2 classification as a member of the professions with a bachelor's degree and five years of progressive experience in his field.

As stated in our prior decision, to be considered a person of exceptional ability, a petitioner must establish that they meet 3 of the 6 regulatory criteria found at 8 § C.F.R. 204.5(k)(3)(ii). *Caron* does not analyze the beneficiary's qualifications under the regulations that govern EB-2 adjudication because it pertains to a now-repealed section of law surrounding eligibility for a non-immigrant visa. The Petitioner does not address our analysis of his eligibility for classification as a person of exceptional ability under the current regulations and therefore has not overcome our determination that he does not meet those requirements.

Regarding the national importance of the Petitioner's proposed endeavor to continue employment as general manager of [redacted] the [redacted] contract submitted on motion were completed after the filing of the petition. Even if the contract showed the proposed endeavor's national importance through economic impact to the [redacted] area, we may not consider it because it occurred after the petition was filed and therefore does not demonstrate eligibility at the time of filing. *See*

[1] We use initials to protect the privacy of individuals and organizations.
[2] Repealed under Public Law 106-95, § 2(c) Nov. 12, 1999, 113 Stat. 1316.

*Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971); 8 C.F.R. § 103.2(b)(1), (12). The Petitioner's remaining arguments on motion are based on his success in managing [redacted] and returning it to profitability. While returning [redacted] to profitability is an achievement, the evidence in the record does not support the Petitioner's argument that continuing to manage [redacted] will have the significant cultural, economic, or social impacts that rise to the level of national importance.

The Petitioner supplied new recommendation letters on motion, arguing that they demonstrate he is well placed to pursue his endeavor as defined in the *Dhanasar* decision. As stated in our appeal decision, the record does not sufficiently link the field of the Petitioner's educational credential, media arts, with the performance of general management duties for corporations. Moreover, the letters of support provided by the Petitioner on motion do not detail his prior work history, industry recognition, or significant contributions to the field of management that would warrant a finding that he is well positioned to advance the proposed endeavor.

The Petitioner's arguments on motion do not directly address the deficiencies identified in our prior decision regarding his qualification as an EB-2 immigrant, the national importance of his endeavor, his positioning to execute the proposed endeavor or whether, on balance, it would be in the best interest of the United States to waive the job offer and labor certification requirements. Accordingly, the Petitioner has not established that our prior decision was based on an incorrect application of law or policy as required for a motion to reconsider. 8 C.F.R. § 103.5(a)(3).

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, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

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

**FURTHER ORDER:** The motion to reconsider is dismissed.