U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31524809

Date: JUL. 10, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a project manager in the field of IT in the oil and gas industry, seeks second preference 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 immigrant 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 as an advanced degree professional but further determined that he did not demonstrate his eligibility for a national interest waiver. We dismissed a subsequent appeal, where we applied the analytical framework set forth in *Dhanasar* for adjudicating national interest waiver petitions. *Matter of Dhanasar,* 26 I&N Dec. 884, 889 (AAO 2016). We determined that the Petitioner did not establish that his endeavor has national importance under the first prong of the *Dhanasar* framework and thus we concluded that the Petitioner did not overcome the denial regarding his eligibility for a national interest waiver.[1] 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.

First, we turn to the motion to reopen, which 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 submits tax documents for the Petitioner's company [redacted] a PNC Bank statement for October 11, 2023, to November 8, 2023, indicating an ending

[1] We declined to reach whether the Petitioner meets the remainder of the second and third prongs under the *Dhanasar* framework, citing the first prong as being dispositive of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *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 an applicant is otherwise ineligible).

balance of $331,938.90, and a personal declaration discussing the general implementation of disruptive technologies such as Artificial Intelligence, Data Science and Machine Learning in the oil and gas industry. Regarding the latter, this personal declaration relates to the substantial merit aspect of the proposed endeavor rather than the national importance. And the financial documents submitted relate more to the second prong of *Dhanasar* where a petitioner must show that they are well positioned to advance the proposed endeavor. Our prior decision included a first prong analysis under the *Dhanasar* framework, which was the basis for our decision to dismiss the appeal in this matter. Because we did not analyze the second prong, this evidence is not responsive to our prior decision and cannot be considered new evidence. Considering the deficiencies described, the Petitioner has not provided sufficient evidence to merit a reopening of this matter.

Next, we turn to the Petitioner's motion to reconsider, which 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.

In our prior decision, we determined that the Petitioner did not demonstrate that his endeavor: (1) would broadly impact the oil and gas industry, (2) has significant potential to employ U.S. workers, (3) or that it otherwise offers substantial positive economic effects for our nation such as creating jobs in economically depressed areas. On motion, the Petitioner does not adequately address these deficiencies and instead contests the correctness of our prior decision based on the assertion that we focused our "analysis on the national scope of the endeavor's prospective benefits rather than the endeavor's national importance, to evaluate whether Mr. [redacted] proposed endeavor satisfies *Dhanasar's*, first prong." Consequently, the implication is that we have resurrected the "national in scope" criterion in the now-vacated case of *Matter of New York State Dept. of Transp.*, 22 I&N Dec. 215 (Acting Assoc. Comm'r 1998) (*NYSDOT*). However, nowhere in our decision do we reference *NYSDOT*. The Petitioner further contends "the AAO's overemphasis on the geographic breath of Mr. [redacted] endeavor on appeal is exactly what the AAO sought to avoid when it modified this prong of the national interest standard to assess 'national importance' rather than 'national in scope.'"

We note that while *Dhanasar* seeks "to avoid overemphasis on the geographic breadth of the endeavor," it nevertheless highlights the importance of demonstrating the breadth of an endeavor's implications through key characteristics, such as "national or even global implications" of an endeavor or an endeavor's potential for "substantial positive economic effects, particularly in an economically depressed area." *Matter of Dhanasar*, 26 I&N Dec. at 884-85. As determined in our prior decision, the Petitioner did not establish that his proposed endeavor possesses these characteristics. As discussed, the Petitioner pointed to a submitted [redacted] Report and contended that this demonstrated that his endeavor would allow the United States oil and gas industry to reduce carbon emissions. However, we determined that the Petitioner did not articulate or document what technologies or digitization methods he would implement to lead to carbon emissions reduction, what oil and gas companies or executives he would work with, or how his work would likely lead to a reduction in carbon emissions on a national level. Hence, the Petitioner has not established on motion that we incorrectly applied these characteristics to the facts and evidence presented on appeal.

Because we have concluded that the Petitioner has not established that our prior decision was based on an incorrect application of law or policy when the decision was issued, he continues to be ineligible for a national interest waiver under the first prong of the *Dhanasar* framework. We therefore do not need to reach a determination as to whether he meets the remainder of the second and third prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *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 an applicant is otherwise ineligible).

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.