U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32070076

Date: JULY 18, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a facilities manager, seeks employment-based second preference (EB-2) 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 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 did not demonstrate his eligibility for the requested national interest waiver. We dismissed a subsequent appeal. The matter is now before us on a combined motion to reopen and 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 combined 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).

We incorporate by reference our prior analysis in the appeal decision. By way of summation, the Petitioner proposes to operate his own facilities management services company in the [redacted] Florida, area. We withdrew the Director's conclusion that the Petitioner qualifies as a member of the professions holding an advanced degree because the record does not establish that the stated occupation of "facilities manager" is either one of the occupations listed at section 101(a)(32) of the Act or an occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2) (defining "profession"). We further concluded that the record does not establish the proposed endeavor has national importance. More specifically, we explained that the Petitioner's focus on his professional experience and knowledge relate to the second *Dhanasar* prong—whether an individual is well-positioned to advance a proposed endeavor—but the record does not establish how the potential prospective impact of the specific endeavor he proposes to undertake "will rise to the level of national importance, rather than only

impacting his clients." *See Matter of Dhanasar*, 26 I&N Dec. 884, 888-91 (AAO 2016), for an elaboration on the prongs.

On motion to reopen, the Petitioner asserts the stated occupation of "facilities manager" qualifies as a "profession," based on a selective excerpt of information provided by the Department of Labor, Bureau of Labor Statistic's Occupational Outlook Handbook (*Handbook*) that asserts, "Although administrative services and facilities managers' educational requirements vary by organization and the work they do, these workers typically need a bachelor's degree and related work experience."

The selective excerpt of information provided by the *Handbook* the Petitioner submits on appeal—copied and pasted into his brief rather than submitted in their entirety—does not reflect the *Handbook*'s complete discussion of typical qualifications required of "facilities manager" positions. The *Handbook* provides the following: "Administrative services and facilities managers typically need a bachelor's degree, often in business or a related field. However, some people enter the occupation with a high school diploma." Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Facilities Manager, https://www.bls.gov/ooh/management/administrative-services-managers.htm#tab-4. In contrast, as we discussed in our prior decision, the Occupational Information Network (O*NET) states that the education requirements for "facilities manager" positions include "training in vocational schools, related on-the-job experience, or an associate's degree," not that it is an occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. *See* O*NET OnLine Summary Report for "Facilities Managers," https://www.onetonline.org/link/summary/11-3013.00. The Petitioner suggests on motion that O*NET is "not linked to the Department of Labor [and has] no connection with the government." Contrary to the Petitioner's suggestion on motion, "[t]he Occupational Information Network (O*NET) is developed under the sponsorship of the U.S. Department of Labor/Employment and Training Administration (USDOL/ETA)." O*NET Center, About O*NET, https://www.onetcenter.org/overview.html. Moreover, "[t]he O*NET Program is the nation's primary source of occupational information." *Id.*

As noted, the Petitioner bears the burden of establishing eligibility for the requested classification. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. On motion, the Petitioner has not established that the stated "facilities manager" position is either listed at section 101(a)(32) of the Act or otherwise in an occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2) (defining "profession"). Therefore, the Petitioner has not established second-preference eligibility as a member of the professions holding an advanced degree. *See id.*

Beyond the issue of whether the stated "facilities manager" position qualifies for second-preference classification, the Petitioner does not submit a new fact material to the separate grounds for which we dismissed the appeal—that the record does not establish the proposed endeavor has national importance and, thus, does not satisfy the three *Dhanasar* prongs. Instead, the Petitioner resubmits a duplicate copy of the brief he submitted on appeal, and he requests us to "consider what was argued at the time of the appeal and analyze what was presented to demonstrate national importance (part of prong 1) and prongs 2 and 3."

Even if the Petitioner established second-preference eligibility as a member of the professions holding an advanced degree, which he does not for the reasons discussed above, the motion to reconsider does not present a new fact material to the issue of whether the record satisfies the *Dhanasar* prongs. Because the Petitioner does not submit a new fact supported by documentary evidence regarding the separate grounds for which we dismissed the appeal—that the record does not establish the proposed endeavor has national importance—the motion to reopen does not overcome that dismissal basis. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91. Therefore, we will dismiss the motion to reopen. 8 C.F.R. § 103.5(a)(2), (4).

Next, 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. However, the Petitioner does not specify on motion to reconsider any particular law or policy, nor does the Petitioner elaborate on how our prior decision may have incorrectly applied such a law or policy. Instead, as noted above, the Petitioner submits a duplicate copy of the brief he submitted on appeal, and he requests us to "consider what was argued at the time of the appeal and analyze what was presented to demonstrate national importance (part of prong 1) and prongs 2 and 3." A motion to reconsider is not a process by which a petitioner may submit the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). Because 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, the motion to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(3)-(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.