U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31160988

Date: JUN. 4, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an occupational health and safety technician and entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. *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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 that the Petitioner did not establish eligibility for a national interest waiver because he did not demonstrate the national importance of his proposed endeavor. The Petitioner later filed an appeal that we dismissed.

The matter is now before us on combined motions to reopen and reconsider. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. 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 motions.

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 after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national 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*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

In dismissing the Petitioner's appeal, we acknowledged the Petitioner's intention operate a company providing consultancy services to improve occupational health and safety for small- and medium-sized businesses. We noted that the Director determined in the denial that the proposed endeavor had substantial merit. However, we also detailed the reasons why the evidence of record did not show how the Petitioner's proposal to operate a consultancy company would benefit the United States on a national level. We explained that, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. We further observed that the projections depicted in the Petitioner's business plan were not supported by corroborating evidence and a sufficient explanation of how those projections would be realized. We explained that much of the material the Petitioner relied on to establish the national importance of his endeavor highlighted his academic and professional experience, which relates generally not to the first prong of the *Dhanasar* adjudicative framework, but to the second, focusing on whether an individual is well positioned to advance an endeavor. We discussed how the Petitioner did not establish that the benefits to the regional or national economy would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

In our prior dismissal, we ultimately concluded that the Petitioner did not show that his proposed endeavor would nationally impact the industry or benefit the regional or national economy. Since the record did not establish the national importance of the Petitioner's specific proposed endeavor, as required under *Dhanasar's* first prong, he had not demonstrated eligibility for a national interest waiver as a matter of discretion. We also reserved his appellate arguments regarding his eligibility under *Dhanasar's* second and third prongs, as considering them would have served no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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). For the sake of brevity, we incorporate our previous analysis of the record and will repeat only certain facts and evidence as necessary to address the Petitioner's assertions on motion.[2]

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 submits a statement asserting the following:

> The appeal dismissal decision is deficient, as it does not evaluate all the arguments presented by the Petitioner in the appeal, that would, undoubtedly, lead to a different conclusion, proving that the Petitioner not only qualifies for the requested classification, but also meets al requirements for the National Interest Waiver.

[2] Our previous decision in this matter was ID# 28802834 (AAO OCT. 24, 2023).

The Petitioner's motion does not provide new facts supported by documentation that establish the national importance of his proposed endeavor. The Petitioner does not refute or overcome the conclusions in our previous decision. The Petitioner has not provided new facts showing that he meets the "national importance" requirement of *Dhanasar*'s first prong, and therefore he has not overcome our prior determination. The motion to reopen is therefore dismissed as the Petitioner's has not met the requirements of such a motion pursuant to 8 C.F.R. § 103.5(a)(4).

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, while the Petitioner asserts that our decision was "deficient" because it did "not evaluate all the arguments presented by the Petitioner in the appeal," he does not identify what arguments were not evaluated. He also does not explain how our decision to dismiss his appeal was erroneous, nor does he assert whether our decision was incorrect based on the evidence in the record at the time of the decision. We stress that to establish merit for reconsideration of our latest decision, a petitioner must state the reasons why the petitioner believes the most recent decision was based on an incorrect application of law or policy; and specifically cite laws, regulations, precedent decisions, and/or binding policies they believe we misapplied in our prior decision. The Petitioner has not done so here.

In light of the above, we conclude that this motion does not meet all the requirements of a motion to reconsider and must therefore be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.