U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31135874

Date: JUNE 10, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a police inspector, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. 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 attached to this EB-2 immigrant classification. *Id.*

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish the proposed endeavor's national importance or that a waiver of the requirement of a 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 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). By regulation, our review is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). We must dismiss any motion that does not satisfy the relevant motion requirements. 8 C.F.R. § 103.5(a)(4). Upon review, we will dismiss the Petitioner's motions.

I. 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). We interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes within the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute the submission of "new facts."

On motion to reopen, the Petitioner submits a brief, a copy of the Director's decision, and an updated business plan dated November 2023. However, the Petitioner's motion to reopen does not discuss or specifically point to any new facts or evidence to support his motion. Although the Petitioner's business plan includes updated crime, industry, and employment related statistics from 2023, the two prior versions of his business plan presented before the Director offer similar statistics from previous years. Similarly, while the updated business plan expounds on the proposed endeavor, its claimed

importance, and the value of security and public safety generally, the record already includes evidence on these issues.

The Petitioner's updated business plan does not constitute "new facts," but rather cumulative, repackaging of materials already in the record, which is insufficient to meet the requirements for reopening. *See id.* Again, the Petitioner has not explained why the evidence submitted with his motion comprises new facts warranting reopening of our prior decision. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). Accordingly, we will dismiss the motion to reopen.

II. 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).

On motion, the Petitioner contests the correctness of our prior decision. He asserts that we erred in determining he had not established eligibility for a national interest waiver by an "erroneous conclusion of the law" and "misconception" of *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] The Petitioner asserts that we imposed "novel" requirements beyond those set forth in 8 C.F.R. § 204.5 and ignored the evidence.

Specifically, the Petitioner claims that the *Dhanasar* decision allowed for broad definitions of the endeavor's "potential prospective impact" and that demonstrating the endeavor has national or global implications is not a requirement in determining a proposed endeavor's national importance.[2] Accordingly, he argues that it is not mandatory, as our decision purportedly indicated, for his endeavor to "extend beyond his company and its clients to impact the industry in which it intends to operate, or broadly enhance societal welfare at a level commensurate with national importance" to fulfill the requirements of *Dhanasar's* first prong. Additionally, he objects to our statement that the evidence did not show his company would "employ a significant population of workers in a specific area or offer the region or its population a substantial economic benefit through employment levels or business activity." He contends that the language of the law and policy do not specify a predetermined number of individuals that a business must employ to show its national importance.

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[1] In his motion, the Petitioner also asserts he established eligibility for a national interest waiver under *Dhanasar*'s second and third prongs because we did not object to or address these prongs in our dismissal. This is incorrect. In our prior decision, we reserved consideration of these matters because the Petitioner had not established his eligibility under *Dhanasar*'s first prong. As this issue was dispositive of the appeal, it was unnecessary for us to reach the remaining two prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach."); *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).

[2] The Petitioner also asserts that *Dhanasar*'s analytical framework was intended to "make it easier for individuals, specially [sic] entrepreneurs . . . to establish that a proposed endeavor was of national importance." However, we note that *Dhanasar* intended to "provide greater clarity, apply more flexibility to circumstances of both petitioning employers and self-petitioning individuals, and better advance the purpose of the broad discretionary waiver provision to benefit the United States." *Matter of Dhanasar*, 26 I&N Dec. at 888-89. The Petitioner has not referenced any language in *Dhanasar* that discusses an intention to ease the standards specifically for entrepreneurs.

The Petitioner has not persuasively shown that our decision was based on an incorrect application of law or policy. Our statements referenced here were made in the context of analyzing the Petitioner's assertions that his proposed endeavor would have broader implications in the private security or public safety sectors, as claimed in his business plans. Our consideration of these factors was not a discussion of mandatory requirements in the determination of his endeavor's purported national importance but, rather, a discussion of examples showing why the evidence was insufficient to support his claims of broader implications in the industry or nation.

Likewise, our statements related to the Petitioner's prospective employment levels were in the context of analyzing the endeavor's potential prospective economic impacts. For example, we addressed reasons why the evidence, including the employment and financial projections from the business plans, did not sufficiently demonstrate the endeavor would rise to the level of "substantial positive economic effects." Although the Petitioner contends on motion that it is unclear why the evidence did not sufficiently support his claim when we acknowledged the sales forecasts, tax payments, and projected income statements in the business plan indicated the company's "growth potential," simply showing "growth potential" is not equivalent to demonstrating "significant economic impact" or "substantial positive economic effects" as contemplated by *Dhanasar*. *Id.* at 889-890. Additionally, we note that while a predetermined number of potential employees is not required to show an endeavor's national importance, employing a significant population of U.S. workers in the area or offering other substantial economic benefits through employments levels or business activity may be indicative of an endeavor's "substantial positive economic effects." After considering all these factors and the evidence in the record, we correctly concluded the Petitioner had not adequately demonstrated that the potential prospective impact of his endeavor would rise to the level of national importance.

Similarly, with regard to our discussion of the expert opinion letters, the Petitioner argues that we "modified the plain language of the examples" in *Dhanasar* and created an "ultra vires obligation." He states that, under *Dhanasar*, an endeavor may show national importance if it has a "significant potential to employ U.S. workers" or has "other substantial positive economic effects." *Id.* at 890. The Petitioner contends we "shifted" the position of the word "significant" to "operate as if a large number of workers must be employed to establish national importance," when *Dhanasar* only indicates that a "significant potential" to employ U.S. workers is sufficient. In addition, he asserts that we "changed the legal recommendation" from the endeavor having "substantial positive economic effects" to requiring the endeavor offer a particular U.S. region or its population "substantial economic benefits" via employment levels or business activity. By use of the word "benefits" instead of "effects," he claims we required that the endeavor "must have already produced economic advantages to the population and the region," which supersedes *Dhanasar*'s purported recommendation, as summarized by the Petitioner, that the proposed endeavor only "substantially influence[] an economically depressed area to have positive economic effects."

Our statements referenced here were made in the context of our response to the experts' claims, which stated, in part, that the proposed endeavor "will positively contribute to the nation's economy through job creation and taxes generated." The points we highlighted addressed these claims of alleged job creation and potential tax revenue, and they fell within *Dhanasar's* parameters, as they relate to our analysis of the endeavor's potential prospective economic impact. Further, as explicitly stated in our previous decision, these details served as examples, not mandatory requirements, of why the evidence did not sufficiently corroborate the experts' assertions.

The Petitioner also argues that his qualifications enabling him to establish his proposed endeavor in an industry or sector that is a subject of national initiatives aligns with the requirements to establish the national importance of his endeavor. However, as discussed in our prior decision, the Petitioner's work in an industry or sector that is the subject of national initiatives is not sufficient, *in and of itself*, to establish the national importance of the proposed endeavor. *See id.* at 889 (stating that the first prong's focus is on "the specific endeavor that the foreign national proposes to undertake"). The Petitioner must still demonstrate his proposed endeavor's potential prospective impact in that area of national importance, which he has not done.

Finally, the Petitioner asserts we "failed to evaluate criteria by the correct standard of review." However, he does not detail how our prior decision incorrectly applied that standard. Similarly, he also argues that an "officer may not exercise discretion arbitrarily, inconsistently, or in reliance on biases or assumptions," but does not explain how we exercised our discretion improperly.

The Petitioner has not identified how our decision was based on an incorrect application of law or policy. Accordingly, we will dismiss the motion to reconsider.

III. CONCLUSION

The motion to reopen does not comply with the applicable regulatory requirements. Further, the motion to reconsider does not demonstrate that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Consequently, we have no basis for reopening or reconsideration of our prior decision. Therefore, the motions will be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.