U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31434225

Date: JUNE 13, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner 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 establish that a waiver of the required 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). 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).

On motion to reopen, the Petitioner does not assert any new facts and does not submit any evidence. His submission does not meet the requirements of a motion to reopen. On motion to reconsider, the Petitioner asserts we did not conduct a comprehensive review of the evidence. The Petitioner asserts we are required to "conduct a substantial assessment of the evidence submitted by petitioners (See 8 C.F.R. § 203(b)(2)(A)(B)(C))." Upon review, we find no error in our prior decision, incorporated here by reference. The Petitioner does not specify what relevant evidence he claims we did not consider in our prior decision. The section of the regulations the Petitioner cites to support his claim does not

exist. Title eight of the Code of Federal Regulations contains Part 106, reserves Part 109, and proceeds directly to Part 204. It does not contain a Part 203.[1]

The Petitioner further asserts we erroneously stated he did not specify the Director's errors and we did not acknowledge the Director's abuse of discretion. The Petitioner claims we conducted a "cursory analysis" and failed to consider his arguments on appeal. In our prior decision, we fully addressed the Petitioner's claims on appeal, including his assertion that the Director abused her discretion. We determined the Petitioner did not meet the first prong of the analytical framework in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), to adjudicate national interest waiver petitions. We concluded the Petitioner did not establish the national importance of his proposed endeavor. *See id.* at 889 (providing in relevant part that, to establish eligibility for a national interest waiver, the petitioner must establish that their specific proposed endeavor has national importance). On motion, the Petitioner does not cite any specific error in our application of *Dhanasar*.

In our prior decision, we addressed the relevant evidence and determined it did not demonstrate any broader implications of the Petitioner's proposed endeavor in his field at a level of national importance. *See id.* (stating that national importance is evaluated through consideration of "potential prospective impact" and "broader implications"). We acknowledged the evidence of job growth within the context of startup firms in the United States, but explained why the evidence did not demonstrate the Petitioner's specific proposed endeavor would broadly impact small businesses on a national scale. We reviewed the Petitioner's personal statement and business plan, but concluded they did not demonstrate his proposed endeavor would have economic effects on a level of national importance, as the Petitioner claimed. *See id.* ("An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, . . . may well be understood to have national importance."). On motion, the Petitioner does not identify any misapplication of law or policy in these determinations.

The Petitioner's submission does not meet the requirements of a motion to reopen. 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 motions 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.

[1] To the extent the Petitioner may be referencing the Act rather than the regulations, section 203(b)(2)(A), (B), and (C) of the Act specify the eligibility criteria for EB-2 and waiver of the associated job offer. This section was correctly applied below and on appeal and the Petitioner does not establish error in the assessment or consideration of the evidence submitted under this provision of the Act.