U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 31590529

Date: JUNE 26, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a software developer in the field of information technology, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 eligibility for EB-2 classification and 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).

In our prior decision, incorporated here by reference, 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 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 his proposed endeavor has prospective national importance because of its innovative nature, relevance to global issues, and potential to stimulate the industry and the economy. The Petitioner claims he submitted more than enough evidence to the Director to establish his eligibility under the preponderance of the evidence standard, but he does not identify any specific evidence demonstrating his eligibility on motion. The Petitioner also does not cite any error in our application of *Dhanasar* or specify any other legal error or misapplication of policy in our prior decision.

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 reports the Petitioner submitted regarding the software development industry's growth and contributions to the national economy, but explained they did not address his specific proposed endeavor. *See id.* (explaining the determination of national importance "focuses on the specific endeavor that the foreign national proposes to undertake"). We reviewed the opinion letters and evidence of the Petitioner's extensive work experience and education, but concluded he did not demonstrate his proposed endeavor would have economic effects on a level of national importance. *See id.* at 890 ("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 also asserts he meets three of the regulatory criteria for establishing exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii). In our prior decision, we did not address and reserved determination of the Petitioner's eligibility for EB-2 classification. As the Petitioner has not demonstrated eligibility for a national interest waiver and this issue is determinative, we again reserve an assessment of the Petitioner's eligibility for EB-2 classification as an individual of exceptional ability. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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).

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.