U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31629533

Date: JUNE 26, 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 or 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 his 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 a 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 motion.

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.

In our prior decision, incorporated here by reference, we determined the Petitioner did not establish eligibility for EB-2 classification as an advanced degree professional because he submitted evidence of vocational education, which is not equivalent to a United States baccalaureate or higher degree. *See* 8 C.F.R. § 204.5(k)(2) (defining advanced degree). On motion, the Petitioner does not identify any misapplication of law or policy in this determination.

In our prior decision, we also concluded the Petitioner met only two of the threshold regulatory criteria to establish exceptional ability and because he did not meet at least three criteria, as required, we did not need to make a final merits determination. *See* 8 C.F.R. § 204.5(k)(3)(ii) (stating the evidentiary criteria to demonstrate exceptional ability). On motion, the Petitioner does identify any error of law

or policy in this assessment. Instead, he claims he submitted sufficient evidence to meet additional criteria.

On motion, the Petitioner also asserts he is eligible for a national interest waiver under the analytical framework of *Matter of Dhanasar,* 26 I&N Dec. 884 (AAO 2016). Because the Petitioner did not establish his eligibility for EB-2 classification and this issue was dispositive of his appeal, we did not reach and reserved further analysis of his eligibility for a national interest waiver under the *Dhanasar* framework in our prior decision. The Petitioner cites no error of law or policy in this aspect of our decision. As his ineligibility for EB-2 classification remains dispositive, we again decline to reach and reserve the issue of the Petitioner's eligibility for a national interest waiver under the *Dhanasar* framework. *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 has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Consequently, the motion to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.