U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30413661

Date: MAR. 13, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a cargo and freight agent 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. We dismissed an appeal of that decision and a subsequent motion to reconsider.

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 Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that 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 contention of the importance of logistics and the cargo and freight industry in the United States, noting that his arguments addressed the substantial merit of his proposed endeavor, rather than its national importance. We also explained the reasons why the evidence of record did not show how the Petitioner's proposal to operate a small business will benefit the United States on a national level. We informed the Petitioner 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 forecasts outlined in the Petitioner's business plan 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.

We ultimately concluded that the Petitioner had not shown that his proposed endeavor to operate a small business would nationally impact the logistics of the cargo and freight 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, we determined that 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). We dismissed the appeal.

On a motion to reconsider, the Petitioner repeated arguments concerning the merit of his proposed endeavor and restated assertions that he made on appeal regarding the purported national importance of the endeavor. We informed the Petitioner that the merit of the proposed endeavor was not at issue, as the Director found that the proposed endeavor has substantial merit, and we concurred in our appeal decision. We explained that, to establish merit for a motion to reconsider of our latest decision, a petitioner must both state the reasons why they believe the most recent decision was based on an incorrect application of law or policy and must specifically cite laws, regulations, precedent decisions, and/or binding policies they believe we misapplied in our prior decision. The Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions and restating his initial claims; the motion must demonstrate how we erred as a matter of law or policy. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit, in essence, the same brief and seek reconsideration by generally alleging error in the prior decision).

While we acknowledged that the Petitioner submitted a brief containing arguments, we determined that the Petitioner did not directly address the conclusions we reached in our immediate prior decision or provide reasons for reconsideration of those conclusions. We explained that the brief in support of the motion to reconsider lacked any cogent argument as to how we misapplied the law or USCIS policy in dismissing the appeal. We dismissed the motion.

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. Our previous decision in the matter of the Petitioner's appeal was ID# 24993021 (AAO FEB. 13, 2023). Our most recent previous decision in the matter of the Petitioner's subsequent motion to reconsider was ID# 27290965 (AAO SEP. 11, 2023).

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 reiterates the importance of his proposed endeavor to own and operate a business offering cargo and freight services in [redacted] Florida. The Petitioner offers previously submitted evidence and arguments which we considered when dismissing his previous motion. The Petitioner's instant motion to reopen does not provide new facts supported by documentation that establish the national importance of his proposed endeavor. The Petitioner's discussions of the cargo and freight industry do not refute or overcome the conclusions in our previous decision, and he does not sufficiently explain how this information demonstrates that his endeavor will have a national impact. As the Petitioner does not submit new facts to demonstrate that he meets the "national importance" requirement of *Dhanasar*'s first prong, he has not overcome our prior determination. The motion to reopen is therefore dismissed 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, the Petitioner reasserts that his proposed endeavor has national importance, but he does not contend that our decision to dismiss his appeal was erroneous, nor does he explain 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 do both of the following: state the reasons why the petitioner believes the most recent decision was based on an incorrect application of law or policy; 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.