U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35964128

Date: MAR. 13, 2025

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 his eligibility for the requested national interest waiver. 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 combined motion.

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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings (the dismissal of the appeal). 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 appellate decision, we agreed with the Director that the Petitioner did not establish eligibility for a national interest waiver because he did not meet the first prong of the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). Specifically, we explained that, although the Petitioner's endeavor to operate business ventures in the fields of telehealth and home building and renovation had substantial merit, the record did not establish the national importance of the endeavor as contemplated in *Dhanasar*. *Id*. While we acknowledged that the Petitioner has operated businesses in Brazil and in the United States, we concluded that the Petitioner did not provide an explanation or probative evidence corroborating the basis for his business projections or otherwise establish that his endeavor would result in substantial positive economic effects contemplated in

Dhanasar. Moreover, although we evaluated his assertions of the importance of the healthcare and housing industries in which the Petitioner's business ventures operate, we determined that he did not establish that his endeavor would result in broader implications beyond his businesses and prospective clients, concluding he did not establish the prospective impact of the endeavor would rise to the level of national importance as contemplated in *Dhanasar*. *See id.* (explaining the determination of national importance "focuses on the specific endeavor that the foreign national proposes to undertake").

On motion to reopen, the Petitioner submits evidence previously submitted concerning his telehealth app and his housing construction and renovation business, and he reiterates arguments concerning the importance of the industries in which he intends to operate, as well as his qualifications to do so.[1] The Petitioner asserts that his digital marketing solutions have "strong potential to revolutionize several industries," but he does not provide new information to support that claim, such as probative evidence of the impact of his telehealth app compared with other similar apps or digital marketing solutions. As to our determination that his business forecasts lacked corroborating evidence, the Petitioner contends that the projections in his business plan "are not mere guesses but are crafted from detailed research, industry standards, and analytical modeling intended to outline the endeavor's economic contributions and feasibility"; he does not, however, elaborate on any informational sources utilized. The Petitioner has not submitted new facts that that would warrant reopening of the proceedings and, therefore, has not met the requirements for a motion to reopen. 8 C.F.R. § 103.5(a)(2). The motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion to reconsider, the Petitioner contests the correctness of our prior decision, asserting that we imposed a stricter standard of proof than that of preponderance of the evidence,[2] as well as novel and substantive evidentiary requirements. Referencing our evaluation of his business plan—which we determined lacked probative evidence to corroborate its claims—the Petitioner states the following:

> [T]he [*Dhanasar*] criteria aim to gauge the potential future impact of an endeavor rather than demand a quantitative threshold for national importance. The objective evidence [the Petitioner] has provided . . . clearly supports his project's potential impact beyond his clients, to revolutionize the (tele)health and real estate sectors, which are both critical to the U.S. economy and societal welfare. The criteria are designed to ensure the petitioner presents a logically structured and viable plan, not to impose unattainable standards or numeric requirements to be projected by the company, because the company is a mere means to advance the proposed endeavor rather than the proposed endeavor itself.

In his brief, as well as in his business plan and in previous statements, the Petitioner generally asserts the importance of his endeavor based on its placement within industries that are, themselves, inherently important to the U.S. economy and societal welfare. The Petitioner, however, has not illustrated how his specific endeavor within these industries would have national importance. In addition to the absence of an explanation of how the Petitioner's specific endeavor is an undertaking of national importance, the record lacks probative evidence to support his claims. For example,

[1] We note that a petitioner's qualifications to advance a proposed endeavor relate not to the first prong of the *Dhanasar* framework, which concerns the endeavor's national importance, but to the second.

[2] *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place).

concerning his intention to develop housing, the Petitioner included a March 2015 report from the National Association of Homebuilders that explored the one-year economic impact of building one hundred single-family houses "in a typical local area." Because the Petitioner repeatedly emphasizes in the record that his company has acquired a total of nine homes, it is not clear how his own potential economic impact in a given local area would compare to this much larger hypothetical development. And regarding his claims of the influence of his digital marketing solutions on millions of people, the record does not include probative evidence demonstrating the usage or influence of any digital product that he has developed. As the record did not include relevant and probative evidence relating to the Petitioner's specific endeavor, the Petitioner did not meet the standard of proof. Again, 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).

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. 8 C.F.R. § 103.5(a)(3). Therefore, the motion 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.