U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29715410

Date: MAR. 14, 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, in the alternative, as an individual of exceptional ability in the sciences, arts or business. 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. The Director concluded that although the Petitioner established eligibility for EB-2 classification as a member of the professions holding an advanced degree, the record did not demonstrate his eligibility for the requested national interest waiver. We dismissed the subsequent appeal, then later dismissed the Petitioner's motions to reopen and reconsider the proceeding. The matter is now before us again on the second combined motions to reopen and reconsider.

In these proceedings, 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 both motions.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

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).

The scope of any motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). As noted, we dismissed the prior combined motions because the motion to reopen did not present a new fact, supported by documentary evidence, that showed proper cause for us to reopen the decision, and the motion to reconsider did not identify a law or policy that we incorrectly applied to the evidence in the record.

Thus, our analysis for these combined motions is limited to the following: (1) whether the Petitioner establishes that the dismissal of the previous combined motions was based on an incorrect application of law or policy; or (2) whether the Petitioner presents a new fact, supported by evidence, that shows proper cause to reopen our decision on the previous combined motions. 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). Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. See INS v. Doherty, 502 U.S. 314, 323 (1992) (citing INS v. Abudu, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." See INS v. Abudu, 485 U.S. at 110.

In determining whether a petitioner merits a discretionary waiver of the job offer requirement "in the national interest," Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. Dhanasar states that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that the proposed endeavor has both substantial merit and national importance; the individual is well-positioned to advance their proposed endeavor; and on balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Petitioner is a petroleum drilling engineer who proposes to continue to work in the United States in his field. As noted above, the Director denied the approval of this petition. In our decision dismissing the appeal, we agreed with the Director's decision that the Petitioner did not demonstrate the national importance of his proposed endeavor under the first prong of the Dhanasar analytical framework. Also, while we agreed with the Director that the Petitioner met the requirements under *Dhanasar's* second prong, we reserved our review of his eligibility under *Dhanasar's* third prong.[2] We dismissed the Petitioner's combined motions as they did meet the applicable requirements. 8 C.F.R. § 103.5(a)(4). We incorporate our prior decisions by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion.

A. Motion to Reopen

On motion, the Petitioner contests the correctness of our prior motion decision. In our prior decision, we dismissed the Petitioner's motion to reopen concluding, "[T]he Petitioner's submission of

[1] See Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third Circuit Court in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[2] See INS v. Bagamasbad, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).

additional, cumulative evidence regarding the overall importance of the oil and gas industry does not constitute new evidence supporting new facts that are material to the issues raised on motion which have not been previously submitted in the proceedings. . . . [T]he Petitioner has not established new facts on motion sufficient to overcome our previous decision." (citations omitted). With the prior motion, the Petitioner submitted his updated statement asserting it further detailed his duties as a petroleum drilling engineer to demonstrate the national importance of his proposed endeavor. In our motion decision, we determined that his updated statement does not support the national importance of his proposed endeavor since his statement emphasized his expertise as an oil drilling engineer and detailed duties he would perform for his employer without showing the broader implications in his field rising to the level of national importance.

Here, the Petitioner takes issue with our analysis of his updated statement and with our consideration of government reports and policies implemented after he filed his initial petition. In support of this motion, the Petitioner submits USCIS policy guidance dated January 21, 2022, advising of updates to the USCIS Policy Manual; the section of the USCIS Policy Manual relating to the national interest waivers; and a printout from the online website of the U.S. Cybersecurity & Infrastructure Security Agency relating to national critical functions. The Petitioner asserts that we failed to consider the policies from these documents and that the new facts from these policies establish the national importance of his proposed endeavor.

Since the USCIS Policy Manual was updated after filing the petition, the Petitioner contends his updated statement was submitted to provide "greater detail about the areas of engineering in which he would work as per the USCIS guidance in support of new evidence."[3] He argues the new statement supports "the 'areas of engineering in which he will work' as a petroleum engineer specializing in drilling with a further specialization in completions (e.g. cementing and casing)." He argues these new facts and evidence were not previously available at the time of filing the petition, therefore form a legal basis for the combined motions.

We acknowledge that the USCIS Policy Manual was updated providing guidance for explaining the details of a proposed endeavor.[4] However, we considered the Petitioner's updated statement in our previous decision, including his further detailed description of his proposed endeavor.

The Petitioner further argues that we failed to consider new evidence and facts showing the critical need for the extraction of fuels and the national importance of his proposed endeavor. Specifically, the Petitioner points to two publications he submitted with the prior motion arguing they are new evidence in support of new facts not previously available to the Petitioner.

The Petitioner contends that the first publication from the U.S. Cybersecurity & Infrastructure Security Agency is new evidence since it was issued after the Petitioner filed the initial petition. Taking it a step further, the Petitioner contends that such new evidence supports new facts stating, "While this evidence may be construed as implying that the oil and gas industry in and of itself is important, it also points specifically to the function of fuel extraction being of a nationally critical nature to warrant specific mention and identification by a [U.S.] [g]overnment [e]ntity and thereby promotion of the

[3] See generally 6 USCIS Policy Manual, F.5(D)(1) https://www.uscis.gov/policymanual.
[4] See generally 6 USCIS Policy Manual, supra, at F.5(D)(1).

same to the level of being of [n]ational [i]mportance." He further argues that not only does this new fact evidence the critical nature of extracting fuels, it shows that fuel extraction extends beyond the Petitioner's private sector employer and "may have other 'substantial economic benefits,'" and "can 'broadly enhance societal welfare'."

The other publication is a report from the Congressional Research Service (CRS), which the Petitioner argues also supports the critical need for the extraction of fuels and the national importance of his proposed endeavor. He further contends that since the USCIS Policy Manual specifically stresses the probative role of quasi-government agencies in determining the national importance of a proposed endeavor, CRS being a quasi-government agency "clearly supports the broad implications of [the Petitioner's] endeavor" through this publication. The Petitioner's argument here is misplaced. The reference in the USCIS Policy Manual to quasi-governmental entities specifically relates to letters issued by those entities who are interested in a petitioner's endeavor, not reports or articles issued by those entities relating to an industry or field.[5]

Regardless of whether the government reports and articles were issued after the Petitioner filed the petition, we considered them in our previous decisions. Resubmitting the previously provided reports and articles does not constitute new facts.

In the instant motion to reopen, the Petitioner has not stated new facts or submitted additional evidence to establish that we erred in dismissing our prior motions. Instead, the Petitioner's motion relies on evidence in the record. We disagree with the Petitioner's arguments that the government policies and guidelines issued after the Petitioner filed this petition should be considered new evidence supporting new facts demonstrating the national importance of his proposed endeavor. Our prior motion decision considered the Petitioner's evidence submitted with this motion, including the Petitioner's updated statement and the articles and reports related to the critical nature of fuel extraction. We considered this evidence finding they did not constitute new facts sufficient to overcome our appeal decision. Because the Petitioner has not established new facts that would warrant the reopening of the proceeding, we have no basis to reopen our prior decision. The motion to reopen will be dismissed. 8 C.F.R. § 103.5(a)(4).

B. Motion to Reconsider

The purpose of a motion to reconsider is to show error in the most recent prior decision. The Petitioner's latest motion to reconsider does not meet this standard. 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. The Petitioner's contentions in the current motion merely reargue facts and issues we have already considered in our previous decisions. See e.g., Matter of O-S-G-, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision For instance, the Petitioner re-argues the national importance of his proposed endeavor to work as a drilling engineer in the oil and gas industry based on government policies and reports previously considered in our appeal and motion decisions. We have already considered the petition under the updated USCIS Policy Manual and found it insufficient. We will

[5] See generally 6 USCIS Policy Manual, supra, at F.5(D)(3).

not re-adjudicate the petition anew and, therefore, the underlying petition remains denied. The motion to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(4).

II. CONCLUSION

The Petitioner has not established that the dismissal of the previous combined motions was based on an incorrect application of law or policy warranting reconsideration of our decision; or that a new fact, supported by evidence, shows proper cause to reopen our decision on the previous combined motions. We affirm our previous determination that the Petitioner has not established his eligibility under the first prong of the Dhanasar analytical framework, and he is thus not eligible for and does not merit a national interest waiver. While he also asserts on motion that he meets the third Dhanasar prong, we will continue to reserve that issue.[6]

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[6] See INS v. Bagamasbad, 429 U.S. at 25-26.