U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37238122

Date: MAR. 14, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a general and operations manager, 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 qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We rejected the Petitioner's appeal as untimely filed and dismissed a subsequent motion. Upon review, we determined the reject notice was issued in error. We reopened the matter on a Service motion under 8 C.F.R. § 103.5(a)(5) and dismissed the appeal, finding that the Petitioner had not established the national importance of his proposed endeavor. 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 motion.

The record reflects that the Petitioner intends to open his own logistics management company. In our prior decision, we concluded although the Petitioner's proposed endeavor had substantial merit, he did not establish its national importance. Although the Petitioner claimed that immigrant entrepreneurship and small businesses are nationally important, he did not provide sufficient evidence of the national importance of his particular endeavor. Furthermore, the submitted evidence did not sufficiently explain the basis for financial projections or growth in employees such that the proposed endeavor would have substantial economic benefits. We additionally determined that the record did not show that the Petitioner's endeavor would have a broader impact on the logistics management industry. *Matter of Dhanasar*, 26 I&N Dec. 884, 889-890 (AAO 2016).

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (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 to reopen, the Petitioner submits a personal statement and copies of previously-submitted evidence. The Petitioner states that the purpose of his motion is to "provide further clarification, emphasize new supporting evidence, and address any potential areas where additional analysis may be required." However, the Petitioner did not submit new evidence regarding the national importance of his proposed endeavor, the basis for our appeal dismissal, nor did he assert that he was providing documentary evidence of new facts that establish his eligibility for the requested national interest waiver. As the Petitioner has not stated new facts that are supported by documentary evidence, he has not met the requirements of a motion to reopen.

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. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion to reconsider, the Petitioner contends that he is eligible for the national interest waiver according to the *Dhanasar* requirements. The Petitioner contends that his proposed endeavor aligns with *Dhanasar* because it addresses significant economic needs in a localized area. In support of this contention, the Petitioner refers to articles submitted below demonstrating the growing demand for logistics services and projections of job creation and local economic benefits for his company's expansion. But he does not address our appeal dismissal's determination that he had not provided sufficient evidence of his claim of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. 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.

Generally, aside from disagreeing with the denial of his national interest waiver, the Petitioner's instant motion does not specify an erroneous conclusion in our decision dismissing his appeal. His contentions in the current motion merely reargue facts and issues we considered in our prior decision. *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"). We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.