U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29989338

Date: MAR. 18, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks second preference immigrant classification (EB-2) as an advanced degree professional, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 that a waiver of the 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 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.

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). 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 submits a legal brief, professional statement regarding his proposed endeavor, the approval notice for a subsequently filed Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver), a professional statement, his business plan, and four publications dated June 26, 2023 (or after) addressing the U.S. government's concerns and plans to ensure our cybersecurity readiness. The Petitioner asserts this evidence establishes his eligibility, because it addresses the urgency of his proposed endeavor and underscores the fact that he would not displace American workers due to the shortage of talent in the cybersecurity field. He further asserts that his endeavor is of national importance due to the national security implications of the United States not having a sufficient pool of professionals in this field, and the growing threats from businesses operating in the United States that are primarily run by foreign governments.

The publications provided include two White House fact sheets, which collectively address the Biden Administration's strategy to bolster the nation's cybersecurity by working to create a "skills-based digital future where workers have access to good-paying, middle-class cyber jobs within their communities" and through the coordination of federal agencies to bolster our cybersecurity. Another news article provided draws attention to federal agencies lack of implementation of the Biden Administration's guidelines and plan to shore up our cybersecurity vigilance, which according to the writer, has left the United States less secure. Another news article discusses the shortage of cybersecurity professionals in the United States, which has led to 700,000 job openings in the field.

At the outset, we note that the Petitioner does not contest the correctness of our prior decision or point to any error of law or policy in our analysis. Instead, he "ask[s us] to reconsider [our] decision and use [our] discretion to approve [his] Form I-140 petition." In support of this request, the Petitioner relies on the above-referenced evidence to assert the national importance of his endeavor. As stated in our prior decision, 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." *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). Furthermore, our prior decision explained that under this principle, the Petitioner's burden is to establish "the national importance of *his* services as a CISO operating his own consulting business rather than the national importance of cybersecurity technologists, the cybersecurity and information technology industries, or the wide range of business fields or industries impacted by cybersecurity threats." Our prior decision also explained the reasons why merely working in a STEM field does not automatically make an endeavor of national importance under the *Dhanasar* framework. *See generally* 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policymanual. Lastly, our decision explained that the Petitioner had not established the national importance of his endeavor such that he warranted a waiver of the job offer, and thus of the labor certification. The Petitioner has not established any error in that determination. As such, he has not met the requirements for a motion to reconsider.

Additionally, the Petitioner does not meet the requirements for a motion to reopen because the aforementioned evidence does not constitute new facts within the meaning of 8 C.F.R. § 103.5(a)(2). Although our prior decision did not address the Petitioner's assertions regarding the shortage of talent in the cybersecurity field, he has not met his burden to establish this is a new fact within the meaning of the regulation. Even the Petitioner's submitted evidence explains that "[t]he problem with the national cybersecurity talent pipeline isn't new. . .." Thus, a talent shortage in his field is not a sufficient reason to reopen his appeal. Furthermore, we are not persuaded by the Petitioner's claim that his proposed endeavor has national importance due to the shortage of professionals in his industry, as there is no indication that his proposed endeavor stands to impact or significantly reduce the claimed national shortage. Moreover, shortages of workers are directly addressed by the U.S. Department of Labor through the labor certification process. And as our prior decision explained, merely working in an important field or profession is insufficient to establish the national importance of the proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. Finally, although the Petitioner has a subsequently approved Form I-140 petition (with national interest waiver), we decline to exercise our discretion to

reopen the matter on this basis because our review pertains only to our prior decision, and the record of his approved petition is not before us.[1]

Although the Petitioner has submitted additional evidence in support of the motion to reopen, he has not established eligibility. 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. 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.

[1] Moreover, if the approved petition was based on the same assertions that are contained in the current record, the approval may constitute an error on the part of the Director. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of approvals that may have been erroneous. *See, e.g., Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). Furthermore, we are not bound to follow a contradictory decision of a service center. *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *3 (E.D. La. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001).