U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37822922

Date: MAY 07, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur in healthcare and life sciences, 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). Service Center Operations (SCOPS) denied the petition, concluding that although the record established the Petitioner's qualification as a member of the professions holding an advanced degree, it did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the Petitioner's appeal of the matter, a subsequent combined motion to reopen and reconsider, and a following motion to reopen. The matter is now before us on motion to 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 to reconsider.

We first acknowledge the Petitioner's request for an extension of time to file a response to our prior decision. However, the Form I-290B, Notice of Appeal or Motion, instructions require that "[f]or motions, you must file any brief and/or additional evidence with the Form I-290B." Form instructions carry the weight of regulations. *See* 8 C.F.R. § 103.2(a)(1). We lack the authority to waive this requirement. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations).

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, the Petitioner contends that we erred in failing to offer a complete and accurate analysis of the proposed endeavor's business plan, economic impact analysis, and a recommendation letter in the record in our prior decision. He cites to *Matter of M-P-*, 20 I&N Dec., 786 (BIA 1994) in support of this assertion. In *Matter of M-P-,* the Board of Immigration Appeals found that, when a motion to

reopen deportation proceedings is denied, the immigration judge must identify and fully explain the reasons for such a decision. *See Matter of M-P-*, 20 I&N Dec. at 786. The record reflects that we conducted a complete and accurate analysis of the proposed endeavor's business plan in dismissing his appeal. It further shows that we provided a complete and accurate analysis of the recommendation letter and the economic analysis in dismissing the Petitioner's first combined motion. Accordingly we find no error with our prior decision in which we referenced these analyses and summarized the conclusions stemming from them.

The Petitioner further argues that we improperly applied *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) by imposing an unduly restrictive standard on national importance, disregarding his endeavor's ability to address a national shortage of skilled life science professionals, failing to consider his endeavor's business projections and economic impact data, and overlooking the proposed endeavor's alignment with U.S. economic priorities. The Petitioner's contentions merely reargue facts and issues we have already considered in our previous decisions and are not sufficient to establish that we erred in our preceding 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").

On motion, the Petitioner also maintains that because he had submitted documentation and made additional legal arguments with his second motion to reconsider, we erred in our previous decision when we dismissed the motion on the ground that he had not presented "new facts" under 8 C.F.R. § 103.5(a)(2). However, the Petitioner misconstrues our analysis. In our decision, we made no finding with regard to whether he presented new facts on motion; rather we concluded that the documents submitted on motion did not constitute new facts supported by documentary evidence.

Finally the Petitioner opines that our prior decision was incorrect because evidence in the record at the time of proceedings establishes that he satisfies the evidentiary criteria for an entrepreneur found at 6 *USCIS Policy Manual* F.5(D)(4). However, it is *Matter of Dhanasar* that provides the analytical framework for determining if USCIS' consent is warranted in granting a national waiver petition. *See id.* at 889 (providing that a petitioner must demonstrate that the proposed endeavor has both substantial merit and national importance, that the petitioner is well positioned to advance their proposed endeavor, and that, on balance, waiving the job offer requirement would benefit the United States). *Matter of Dhanasar* does not indicate that there is a requirement for entrepreneurs to establish themselves as such, nor does the USCIS policy guidance cited by the Petitioner provide evidentiary criteria. Rather, this guidance discusses specific evidentiary considerations for entrepreneurial petitioners and provides guidance on how best to analyze evidence unique to entrepreneurs under the *Dhanasar* analytical framework. *See generally* 6 *USCIS Policy Manual* F.5(D)(4) https://www.uscis.gov/policy-manual. The Petitioner does not specify how our prior decision erred in applying the *Dhanasar* framework to the evidence that he lists on motion.

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 reconsider is dismissed.