U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 37959336

Date: MAY 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 an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 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, and dismissed two subsequent motions, concluding that the Petitioner did not qualify for classification as an individual of exceptional ability and 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 dismissed the Petitioner's appeal and a subsequent motion. 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 motions.

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. 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).

In our decision dismissing the prior motion, we indicated that the Petitioner had not demonstrated the national importance of his proposed endeavor under the first prong of the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). We also explained that the Petitioner had not shown that our determination regarding the national importance of his proposed endeavor was incorrect based on the evidence in the record.

The Petitioner maintains on motion that he meets the first prong of the *Dhanasar* framework. Regarding his motion to reopen, it does not offer new facts and is not supported by any documentary evidence. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision.

On motion to reconsider, the Petitioner contends that our latest decision "was based on a misinterpretation of law and regulatory requirements, and a failure to properly consider the evidentiary record." He asserts that our "authority to make discretionary determinations does not extend to disregarding procedural requirements, nor does it permit an agency to ignore relevant legal facts," but his brief does not identify the procedural requirements we disregarded or the legal facts we ignored in our prior decision.

The Petitioner argues that our conclusion his business plan was not supported with corroborating evidence showing the need for additional employees or with specific information indicating how his future revenue projections would be achieved "is inconsistent with well-established legal principles governing the preponderance of the evidence standard." Except where a different standard is specified by law, a petitioner must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Under the preponderance of the evidence standard, the evidence must demonstrate that a petitioner's claim is "probably true." *Id.* at 376. Here, the Petitioner expresses disagreement with our analysis of the claims in his business plan, but he does not explain how our specific determinations applied a stricter standard of proof. Regarding the lack of corroborating evidence, unsupported assertions and speculation have no evidentiary value and are insufficient to establish a filing party has satisfied their burden of proof. *See Matter of Mariscal-Hernandez*, 28 I&N Dec. 666, 673 (BIA 2022).

The Petitioner also takes issue with our statement that the letters from A-A-, D-P, and M-A-A- did not contain sufficient information and explanation, nor did the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work offers broader implications in his field or substantial positive economic effects for our nation that rise to the level of national importance. He contends that our statement "is based on an incorrect interpretation and misapplication of the legal framework established in *Matter of Dhanasar*." The Petitioner argues that our determination "imposes an undue evidentiary burden by requiring the proposed endeavor to demonstrate an economic impact that exceeds the standards set forth in *Dhanasar*" and that there is no requirement "to demonstrate nationwide economic effect." Our decision, however, did not require the Petitioner to show a "nationwide economic effect." An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance. *Id.* at 890. Here, the Petitioner has not demonstrated that we erred in concluding he had not shown that the potential prospective impact of his proposed endeavor stands to offer broader implications in his field or to generate substantial positive economic effects. *Id.* at 889-90.

The Petitioner again argues that we should reconsider the second business plan he submitted in response to the Director's request for evidence. In our appellate decision, we explained that because the Petitioner's second business plan materialized after the filing of the petition, and therefore would not establish his eligibility at the time of filing, it does not assist him in establishing that he meets the requirements set forth in the *Dhanasar* framework. The petition in this matter was filed on December

1, 2022, and the Petitioner has the burden of proof to establish eligibility for the requested benefit at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts"). Further, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The Petitioner has not shown that our determination on this issue was in error.

The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). The Petitioner's contentions in his 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"). We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

The Petitioner has not presented new facts or evidence relevant to our latest decision establishing his eligibility, nor has he shown that our 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.