U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31110790

Date: MAY 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a lawyer, seeks second preference immigrant classification (EB-2) as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 immigrant 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 did not establish that he merits a discretionary waiver of the job offer requirement "in the national interest."[1] Section 203(b)(2)(B)(i) of the Act. The Director dismissed the Petitioner's subsequent combined motion to reopen and reconsider, determining that it did not meet the requirements of a motion to reopen at 8 C.F.R. § 103.5(a)(2). The matter is now before us on appeal. 8 C.F.R. § 103.3.

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). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

Our review on appeal is generally limited to the basis for the immediate prior decision. 8 C.F.R. § 103.5(a)(1)(i), (ii). Although the Petitioner's appellate brief addresses the Director's initial denial decision dated May 19, 2023, the merits of that decision, and of the underlying petition, are not before us. Rather, the only issue before us on appeal is whether the Director properly concluded that the Petitioner's motion filing did not meet applicable requirements of a motion to reopen or a motion to reconsider.

[1] Specifically, the Director determined that the Petitioner's endeavor has substantial merit but not national importance under the first prong of the analytical framework in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). The Director further concluded that the Petitioner is well-positioned to advance his endeavor but did not satisfy the balancing test under the third prong of *Dhanasar.* The Director did not evaluate whether the Petitioner qualifies for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability. Section 203(b)(2)(B)(i) of the Act.

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that the 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). A motion that does not meet applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the Director acknowledged that the Petitioner filed a combined motion but only considered the Petitioner's motion to reopen; the decision does not reflect an evaluation of the Petitioner's motion to reconsider.

The Director's decision summarily concluded that "[t]he evidence submitted with the motion to reopen does not establish that the requirements for filing a motion to reopen have been met." Upon de novo review, the Director properly dismissed the motion to reopen as the Petitioner did not provide any new facts and documentary evidence to support his claim that his endeavor is of national importance. Although the Petitioner contends on appeal that he "presented new facts" consisting of "an enhanced and more detailed Business Plan for . . . the proposed endeavor," the Petitioner's brief largely referenced and reiterated the information in the business plan previously submitted in response to the Director's notice of intent to deny.[2] Reasserting previously stated facts does not meet the requirements of a motion to reopen.

However, we agree with the Petitioner that the Director erred by not addressing the requirements for a motion to reconsider at 8 C.F.R. § 103.5(a)(3) or evaluating the legal arguments the Petitioner made in his brief.[3] An officer must fully explain the reasons for denial in order to allow the petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). As the Director has not yet addressed the merits of the Petitioner's motion to reconsider, the record of proceeding is not ripe for us to consider the Petitioner's arguments.

We will therefore withdraw the Director's decision and remand the matter for further proceedings. On remand, the Director should address the merits of the Petitioner's claims, legal arguments, and the facts and evidence submitted on motion to reconsider, and to issue a new decision.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[2] The Petitioner states in his brief that "[a] detailed description can be found on the Business Plan previously sent."

[3] The Petitioner's brief presented several reasons for reconsideration, claiming that the Director misapplied the preponderance of evidence standard and used incorrect pronouns, possibly "blending" the facts of the case with other cases.