U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34892870

Date: NOV. 04, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an information technology entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, and a national interest waiver of the job offer requirement attached to this classification. See section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Workers (national interest waiver), concluding the Petitioner had not established a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the appeal and subsequent motion to reconsider. The matter is now before us as combined motions to reopen and to reconsider. 8 C.F.R. § 103.5(a)(2)-(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). Upon review, we will dismiss the combined 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). 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).

In the initial filing, the Petitioner stated his proposed endeavor was to establish a startup information technology (IT) consulting firm in the United States to provide for U.S. businesses' cybersecurity services, assess current IT strategies, define an IT governance policy and framework and project management methodologies, and manage implementation of IT projects. The Director determined that the Petitioner had established the substantial merit of his proposed endeavor but had not established its national importance under the first prong of the analytical framework for adjudicating national interest waivers under Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016).

On appeal, we similarly concluded the Petitioner had not established the national importance of his proposed endeavor and thereby had not established his eligibility for a national interest waiver. As the issue was dispositive of the appeal, we reserved the Petitioner's remaining arguments with respect to Dhanasar *'s* second and third prongs. In our prior decision dismissing the motion to reconsider, we addressed the Petitioner's arguments that we erred in our analysis on appeal and concluded that the Petitioner had not established the national importance of his proposed endeavor.

On combined motions, the Petitioner submits a brief and 49 exhibits. However, he does not allege that we erred as a matter of law or policy in our prior decision or that the decision was incorrect based on the evidence in the record of proceedings at the time. Accordingly, he has not satisfied the requirements for a motion to reconsider. See 8 C.F.R. § 103.5(a)(3).

The Petitioner's brief discusses the importance of his "ongoing endeavor" which he describes as leading digital transformation, encompassing IT governance and cybersecurity technologies, of the company [redacted] and its affiliated entities to expand the opportunities for obtaining financing for the agricultural sector of the United States. He also submits articles about the food and agricultural industry in the United States. However, as noted above, the Petitioner initially described his proposed endeavor as owning and operating an IT consulting firm. We will not consider the Petitioner's materially changed proposed endeavor of working for [redacted] and its affiliated entities on digital transformation for the United States agricultural sector. The Petitioner must establish all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. See 8 C.F.R. § 103.2(b)(1), (12); Matter of Katigbak, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Further, a petitioner may not make material changes to a petition that has already been filed in an effort to make a deficient petition conform to USCIS requirements. Matter of Izummi, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1988).

The Petitioner's other evidence describe his contributions to IT governance, his certifications and articles giving context for the certifications, his professional memberships, and compensation records. The Petitioner asserts this new evidence establishes his eligibility for a national interest waiver. However, the Petitioner's knowledge, skills, and abilities relate to the second prong of the Dhanasar framework, which relates to whether the individual is well-positioned to advance their proposed endeavor and thus "shifts the focus from the proposed endeavor to the foreign national." Matter of Dhanasar, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under Dhanasar *'s* first prong. The Petitioner does not provide new facts or evidence describing the national importance of his proposed endeavor, as described in his initial filing, of running an IT consulting firm in the United States. The Petitioner therefore has not asserted or established new facts relevant to our prior decision that would warrant reopening of the proceedings. 8 C.F.R. § 103.5(a)(2).

Consequently, we have no basis for reopening or reconsideration of our decision, and the combined motions 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.