U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28821925

Date: NOV. 15, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an application manager, seeks second preference immigrant classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business, 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).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish his eligibility for the requested national interest waiver. We dismissed the Petitioner's subsequent appeal as well as his motion to reopen. The matter is before us again on a 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.

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 (the dismissal of the motion to reopen). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

In our appellate decision, we concluded that the Petitioner did not meet the first prong of the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). Specifically, we explained that, while we recognized the Petitioner's intent to provide valuable services in the information technology field and acknowledged the importance of his field, we nonetheless concluded that the record did not establish his proposed endeavor would result in broader implications to the field at a level commensurate with national importance contemplated in *Dhanasar*. *Id.* Additionally, we concluded that the Petitioner did not establish that his endeavor would result in substantial economic effects discussed in *Dhanasar*.

As stated, the Petitioner filed a motion to reopen, and submitted additional statements discussing his background and experience within the field, the impact of his work to his former employers' operations, and again reiterated the importance of the information technology field. Because the evidence did not address the shortcomings identified in our appellate decision, nor did the evidence overcome the basis of our dismissal, we concluded that the Petitioner had not shown proper cause for reopening the proceedings.

Now, on motion to reconsider, the Petitioner asserts that in dismissing both the appeal and the subsequent motion to reopen, we did not properly apply the guidance issued in January 2022 relating to national interest waivers filed by science, technology, engineering, and math (STEM) graduates. Additionally, the Petitioner asserts that we did not follow the policy manual guidance addressing national interest waivers filed by entrepreneurs. Notably, however, the Petitioner has not shown how we erred in our application of this guidance to his petition, beyond a blanket assertion that we did not consider this guidance in adjudicating his appeal and motion.

The portion of the USCIS Policy Manual relating to STEM states that we may conclude that a STEM endeavor has national importance when the evidence sufficiently demonstrates that it would help the United States to remain ahead of strategic competitors or current and potential adversaries or when it relates to a field where appropriate activity and investment may contribute to the United States achieving or maintaining technology leadership or peer status among allies and partners.[1] Here, the Petitioner did not show that we erred in concluding that his endeavor will not result in broader implications to his field. And the Petitioner had not otherwise shown that his endeavor will foster progress in STEM technologies. We recognize the value of such technological innovations and importance of STEM related professions; however, merely working in an important field is insufficient to establish the national importance of the proposed endeavor. Accordingly, the Petitioner has not established that we erred in our decision to dismiss his motion to reopen.

Additionally, while the Petitioner does not identify how we misapplied our current policy relating to petitions filed by entrepreneurs, the Petitioner asserts a petitioner can establish the national importance of their endeavor by showing the endeavor has substantial positive economic effects "demonstrated through letters and other statements from third parties," which he asserts were provided in the record. Notably, however, in our decision dismissing both the appeal and the motion to reopen, we evaluated the letters provided and explained why they did not establish the national importance of the Petitioner's specific endeavor. We concluded that the letters in the record established the benefits the Petitioner provided to his former employers, as well as the prospective economic benefits of the industry as a whole, but did not establish that the Petitioner's specific endeavor would lead to broader implications in the field or otherwise result in substantial economic effects. Yet rather than addressing those conclusions or our evaluations of these letters, the Petitioner reiterates the same arguments previously made on appeal and on motion to reopen. Accordingly, the Petitioner has not established that our decision was based on an incorrect application of law or policy.

Because the Petitioner has not demonstrated how we erred as a matter of law or policy, his motion does not meet the requirements of a motion to reconsider under 8 C.F.R. § 103.5(a)(3). *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (confirming that a person cannot satisfy the requirements of

[1] *See generally* 6 USCIS Policy Manual F.5(D)(2).

a motion to reconsider by generally alleging error in the prior decision, rather the filing party "must specify the factual and legal issues" that were decided in error). Consequently, we have no basis for reconsideration of our decision, and the Petitioner's motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.