U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33838063

Date: OCT. 1, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a barber, barber instructor and manager, 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).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner demonstrated eligibility for the EB-2 visa classification, but 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, withdrawing the determination that the Petitioner meets the underlying EB-2 classification and concluded that a waiver of the job offer would not be in the national interest. 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 the aforementioned requirements and demonstrate eligibility for the requested benefit.

In our dismissal, we withdrew the Director's determination that the Petitioner established he was an individual of exceptional ability and concluded that he did not meet any of the six evidentiary criteria for classification as an individual of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii). We also reasoned that although the Petitioner's proposed endeavor has substantial merit, it does not have national importance because the record lacked evidence to demonstrate his endeavor would provide a broad innovation to the personal care and barber field. Further, the record did not corroborate the economic impact of the proposed endeavor. Because the record did not demonstrate eligibility for the

underlying visa classification or national importance, we declined to analyze the second and third prongs of the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016).

On the motion to reconsider, the Petitioner maintains we erred as a matter of law in not applying the preponderance of evidence standard to analyze the endeavor's national importance. Specifically, he asserts that in considering the national interest prong, we incorrectly reviewed the potential impact of the endeavor and only focused on the impact the endeavor would have on employment rather than the endeavor's national initiative. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). To support the Petitioner's assertion, he reiterates that he is developing a vocational training program. He emphasizes the importance of vocational training programs and how these programs help people to learn the practical and theoretical aspects of the profession. However, the issue is not whether vocational training programs are a needed educational resource, but rather how the Petitioner's endeavor would provide this resource. His plans to provide free classes and apprenticeships, which, while worthwhile, lack more developed proposals that would demonstrate an impact on the field of vocational training. The record does not establish, by a preponderance of evidence, that the Petitioner's plans to create a vocational training program would achieve a national impact.

Further, the Petitioner asserts that his endeavor would have national implications in the global marketing industry. He maintains that the company he established is "not only generating direct and indirect jobs but also stimulates the investment of foreign companies on American soil, generating a multiplier effect of opportunities and business for the American economy." Similar to the claims made on appeal, the Petitioner's business plan lacks corroborating data to establish how the business would achieve these goals.

Regarding the motion to reopen, the Petitioner has not provided new facts or documentary evidence to show that he meets the EB-2 visa classification, and therefore he has not overcome our prior determination. With the motion, the Petitioner submits a brief, information on the [redacted] and [redacted] and an employment verification letter, among other documents. In claiming eligibility for the underlying visa classification, he reiterates many of the arguments made on appeal and in the initial filing without providing significant new facts or evidence. The resubmission of course certificates, letters of recommendation, and evidence of his salary are not new facts, and as our prior decision discussed, the Petitioner did not establish he meets at least three of the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) through (F). The motion to reopen is therefore dismissed as the Petitioner has not met the requirements of such a motion pursuant to 8 C.F.R. § 103.5(a)(4).

The Petitioner has not established new facts relevant to our appellate decision that would warrant reopening of the proceedings, nor has he shown that we erred as a matter of law or U.S. Citizenship

and Immigration Services policy. Consequently, we have no basis for reopening or reconsidering our decision. Accordingly, the 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.