U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33948593

Date: OCT. 01, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this 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 record did not establish that the Petitioner qualifies for EB-2 immigrant classification or that the Petitioner was eligible for the requested national interest waiver. The Director dismissed a subsequently filed combined motion to reopen and motion to reconsider, concluding that, although the combined motions established the Petitioner's eligibility for the underlying EB-2 immigrant classification, he did not establish eligibility for the requested national interest waiver. The Petitioner now appeals the Director's dismissal of the combined motions pursuant to 8 C.F.R. §§ 103.3 and 103.5(a)(6).

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 dismiss the appeal.

I. LAW

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the

framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

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); s*ee also Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). A motion to reconsider must establish that the 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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

As a preliminary matter, we emphasize that this appeal relates to the Director's April 2024 dismissal of the Petitioner's combined motions to reopen and reconsider.[2] In the Director's dismissal, they concluded that, although the Petitioner established eligibility for the requested EB-2 immigrant classification on motion, he did not establish his eligibility for the requested national interest waiver. Therefore, the question before us is whether the Director erred in dismissing the combined motions on that basis. Although the August 2023 decision is not the basis of the appeal, we will refer to portions of that decision because it informs our review of the Director's decision dismissing the combined motions.

In their August 2023 decision, the Director determined that the Petitioner did not establish eligibility for a national interest waiver under *Dhanasar*'s three-prong analytical framework. *See Matter of Dhanasar*, 26 I&N Dec. at 889. Specifically, the Director determined that, although the Petitioner's endeavor of operating an IT consulting company specializing in providing cybersecurity services to a variety of businesses was substantially meritorious, the record did not establish the Petitioner's endeavor was nationally important because the Petitioner did not show that his endeavor would result in broader implications to his field—beyond the direct benefits to his prospective clients—or otherwise result in substantial economic benefits contemplated in *Dhanasar*. Additionally, while the Director acknowledged the Petitioner's experience in his field, they nonetheless concluded that the record did not establish he was well-positioned to advance his proposed. The Director also concluded that the Petitioner had not established, on balance, that it would be beneficial for the United States to waive the job offer requirement.

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).
[2] *See* 8 CFR §103.5(a)(6).

As stated, following the denial of their petition, the Petitioner filed a combined motion to reopen and motion to reconsider. On motion, the Petitioner offered the same or similar arguments asserting his eligibility for the national interest waiver which he previously made before the Director. He primarily discussed the importance of the cybersecurity field and the importance of safeguarding against data breaches, as well as his experience within the field, without addressing the conclusions made in the Director's decision regarding these assertions. Additionally, he submitted new letters from his former employers verifying his experience in the field. The Director concluded that the Petitioner established his eligibility for the underlying EB-2 immigrant classification, but did not establish eligibility for the requested national interest waiver. Specifically, the Director noted that, although the combined motions demonstrated the importance of the cybersecurity field, the Petitioner did not establish the national importance of his proposed endeavor, that he was well-positioned to advance his endeavor, or that, on balance, it would be beneficial for the United States to waive the job offer requirement. Accordingly, because the new evidence did not establish eligibility for the national interest waiver, nor did the motion give reasons for reconsideration supported by pertinent precedent decisions to overcome the basis for the denial, the Director dismissed the combined motions.

On appeal, instead of contesting the reasons for the Director's adverse decision on the combined motions, the Petitioner broadly states that the Director's denial was in error. In doing so, the Petitioner fails to specifically identify an erroneous conclusion of law or statement of fact in the Director's most recent decision dismissing the motions, which is the decision on appeal. The reason for filing an appeal is to provide an affected party with the means to remedy what they perceive as an erroneous conclusion of law or statement of fact within a decision in a previous proceeding. *See* 8 C.F.R. § 103.3(a)(1)(v). It is insufficient to broadly assert that the Director made an improper determination. Where a question of law is presented, supporting authority should be included, and where the dispute is on the facts, there should be a discussion of the particular details contested. *Matter of Valencia*, 19 I&N Dec. 354, 355 (BIA 1986). As the Petitioner does not contest the Director's most recent decision, this alone is a basis for dismissal. Nonetheless, upon a de novo review, we conclude that the Director properly dismissed the motion to reopen and motion to reconsider.

On appeal, the Petitioner continues to rely on the importance of the cybersecurity and IT consulting fields rather than addressing the reason for the Director's dismissal. For example, the Petitioner contends that "IT consulting plays a vital role in preventing cyberattacks," and "IT consulting brings significant economic and social benefits." Yet, the Petitioner does not address the Director's conclusion that the record does not establish how his *specific* endeavor is nationally important. Additionally, the Petitioner relies on governmental interest in the success of small and medium-sized businesses to bolster the national importance of his proposed endeavor, but again does not establish how the broader implications of his endeavor would extend beyond his immediate clients to otherwise impact the field or small businesses at a level commensurate with national importance.

The Petitioner also broadly claims that his endeavor will result in substantial economic effects without addressing the Director's prior determinations to the contrary and establishing how these determinations were erroneous. Although *Dhanasar* does not specify a number of U.S. workers that should be hired, a petitioner should nonetheless establish that the substantially positive economic effects claimed, for example through staffing levels or business activity, would rise to the level of national importance contemplated in *Dhanasar*. While any basic economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated how the economic activity

directly resulting from his proposed endeavor would rise to a level commensurate with national importance.

And we acknowledge the Petitioner's claims on appeal relating to his employment as a STEM professional. However, as discussed, the Petitioner has not shown that his endeavor aims to advance STEM technologies and research or has broad implications rather than providing his limited professional services by working within a STEM profession. As such, these assertions do not overcome the Director's decision dismissing the combined motions.

Regarding *Dhanasar*'s second prong, the Petitioner does not directly address the Director's dismissal, and instead broadly states that he is well positioned to advance his endeavor based on the evidence submitted in the record. Similarly, regarding the third prong, the Petitioner does not address the Director's dismissal, but rather focuses on the importance of the cybersecurity field to establish that, on balance, it would be beneficial to waive the labor certification process. In doing so the Petitioner relies on the high demand and shortage of professionals in this field; however, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process. As such, the Petitioner has not shown how this claimed shortage establishes it would be beneficial for the United States to waive the job offer requirement.

The Petitioner's combined motion to reopen and motion to reconsider did not overcome the reasons for the Director's denial, as the new evidence submitted did not establish his eligibility for the national interest waiver under the *Dhanasar* framework, and the motion to reconsider did not identify an incorrect application of law or policy within the Director's decision supported by relevant caselaw, statute, or regulation. Accordingly, the Director properly dismissed his combined motion to reopen and motion to reconsider. *See* 8 C.F.R. § 103.5(a)(4).

III. CONCLUSION

For the reasons above, the Petitioner has not shown that the Director erred in dismissing either the motion to reopen or motion to reconsider.

ORDER: The appeal is dismissed.