U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34263519

Date: OCT. 01, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur in the restaurant industry, seeks employment-based second preference (EB-2) immigrant classification member of the professions holding an advanced degree, 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 Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. We dismissed a subsequent appeal. 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 motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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).

We incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion. On motion, the Petitioner submits industry articles regarding Brazilians in the United States, restaurants in Florida, and Brazilian steakhouses. The Petitioner asserts that these new facts establish his eligibility for the national interest waiver, as they show that his proposed endeavor to open a Brazilian restaurant in Florida is nationally important. Similar to our assessment of the evidence on appeal, we find that these submissions discuss the restaurant industry as a whole and do not specifically address the Petitioner's proposed endeavor.

Moreover, the Petitioner must meet eligibility requirements at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1); *see also* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time). The Petitioner also had the opportunity to submit additional evidence requested

before the Director. New facts after the filing date cannot establish eligibility as of the priority date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Therefore, we will not disturb our previous finding that the Petitioner has not established that his proposed endeavor has broader implications in his industry, and therefore has not established that his endeavor is of national importance under the first *Dhanasar* prong. *See Matter of Dhanasar,* 26 I&N Dec. 884 at 893 (AAO 2016) (a petitioner's "undertaking may have national importance . . . because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances").

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.

On motion, the Petitioner contests the correctness of our prior decision in a counsel-authored brief and personal statement by the Petitioner. In support of the motion, the Petitioner asserts that he has already submitted substantial, relevant, probative, and credible evidence establishing his eligibility for the national interest waiver. He refers to numerous statutes, regulations, case law, and USCIS policy. However, the Petitioner's motion does not explain how our appeal dismissal was incorrect according to these authorities. For example, while the Petitioner argues that our dismissal of his appeal did not properly evaluate the evidence under the *Dhanasar* requirements, he does not specify what evidence was improperly evaluated or how an alternate analysis would have established his eligibility.[1]

Although the Petitioner additionally argues that our appeal decision was "not objectively evaluated but was motivated by obvious bias against" him, he does not further elaborate this claim. *See, e.g.*, *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) (noting that "statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). Our appeal decision thoroughly analyzed the national importance requirements laid out in the *Dhanasar* framework and considered the entirety of the record in the Petitioner's case. Our decision also identified several deficiencies in the record that the Petitioner neither mentions nor seeks to address on motion. As the Petitioner's motion does not support his arguments that our prior decision was based on an incorrect application of law, it does not meet the requirements for a motion to reconsider.

In sum, although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

[1] Similarly, the Petitioner claims on motion that we did not take into consideration the evidence that he is an individual of exceptional ability. As the Petitioner has established before the Director that he qualifies as a member of the professions holding an advanced degree, he is not required to also show that he is an individual of exceptional ability. *See* section 203(2)(B)(i) of the Act (a petitioner must first demonstrate qualification for the underlying EB-2 visa classification as *either* an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business (emphasis ours).

FURTHER ORDER: The motion to reconsider is dismissed.