U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34333346

Date: OCT. 3, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, 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 qualified for classification as a member of the professions holding an advanced degree, but that he had not established 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. The matter is now before us on 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested benefit. 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).

In our decision dismissing the appeal, we agreed with the Director 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). We explained that the Petitioner had not demonstrated the national importance of his proposed endeavor. In addition, we withdrew the Director's determination that the Petitioner was well positioned to advance the proposed endeavor under the second prong of *Dhanasar*.

On motion, the Petitioner asserts that we "erred in not considering the evidence supporting the national impact of [the Petitioner's] proposed endeavor." He repeats previous claims relating to his business plan, recommendation letters, personal statement, and expert opinion letters, but does not explain how

our analysis of this documentation was in error. For example, the Petitioner points to information about his proposed endeavor as discussed in his personal statement and business plan. Our appellate decision, however, specifically considered the Petitioner's economic impact claims as outlined in his personal statement and business plan. We determined the Petitioner had not shown that his proposed endeavor offers "broader implications or potential prospective economic impact rising to the level of national importance." The Petitioner does not articulate how this conclusion is based on an incorrect application of law or USCIS policy.

In addition, the Petitioner maintains that we "applied a stricter standard of proof than permissible when evaluating the evidence of record." Except where a different standard is specified by law, a petitioner must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Under the preponderance of the evidence standard, the evidence must demonstrate that a petitioner's claim is "probably true." *Id.* at 376. Here, the Petitioner expresses disagreement with our analysis of his updated personal statement, business plan, recommendation letters from clients, company financial records, and expert opinion letters, but he does not explain how our specific conclusions applied a stricter standard of proof.

The Petitioner further contends that we erred in determining he had not demonstrated that he was well positioned to advance the proposed endeavor. He argues that we did not consider bank statements, invoices from clients, letters of recommendation from clients, and his business plan. Our decision, however, acknowledged his business plan and explained that operating a business was not sufficient to show a record of success or progress towards achieving the proposed endeavor that renders him well positioned.

The Petitioner also asserts that "the second prong of *Dhanasar* is not designed to proof the 'record of success' of a petitioner's proposed endeavor . . . , but its potential regarding current and previous similar endeavors." The second prong shifts the focus from the proposed endeavor to the individual. To determine whether an individual is well positioned to advance their proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *See Matter of Dhanasar*, 26 I&N Dec. at 890. Contrary to the Petitioner's assertion, an individual's "record of success" is one factor among many that we may consider in determining whether they are well positioned to advance the proposed endeavor.

Furthermore, the Petitioner argues that we "erred in not considering precedent decisions," but he mentions only *Dhanasar*.[1] He states: "As in *Matter of Dhanasar*, [the Petitioner] submitted two (2) probative opinions from independent experts holding a senior position in academia and industry that describe the importance of his proposed endeavor and, more broadly, the benefits of [the Petitioner's] work for the United States." The Petitioner further contends that he "provided compelling evidence, including letters from clients of [the Petitioner's company] and its financial statements, to substantiate [the Petitioner's] claims," but he does explain how our discussion of his evidence was erroneous.

[1] Our appellate decision specifically considered the Petitioner's eligibility under the first and second prongs of the *Dhanasar* analytical framework.

In *Dhanasar*, "[t]he petitioner submitted probative expert letters from individuals holding senior positions in academia, government, and industry that describe the importance of hypersonic propulsion research as it relates to U.S. strategic interests." *Id.* at 892. In addition, the petitioner "provided media articles and other evidence documenting the interest of the House Committee on Armed Services in the development of hypersonic technologies and discussing the potential significance of U.S. advances in this area of research and development." *Id.* Here, the Petitioner has not established that the facts of the instant petition are analogous to those in the *Dhanasar* precedent decision. For example, unlike the scientific researcher in *Dhanasar*, the Petitioner has not demonstrated that his proposed endeavor offers broader implications in the field.

The Petitioner has not demonstrated that our appellate decision was based on an incorrect application of law or USCIS policy and that our decision was incorrect based on the evidence in the record at the time of the decision. Consequently, we have no basis for reconsideration of our decision. Accordingly, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and his underlying petition remains denied.

ORDER: The motion to reconsider is dismissed.