U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34489446

Date: OCT. 17, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a trucking company owner, 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 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 that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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 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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(i), (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).

In our prior decision, incorporated here by reference, we concluded that the Petitioner did not meet the first prong of the analytical framework in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), to adjudicate national interest waiver petitions as the Petitioner did not establish the national importance of his proposed endeavor.[1] The Petitioner indicated that his business, [redacted] will specialize "in the safe and secure transportation of expensive and rare cars, vehicle prototypes, oversized and heavy

[1] We also noted in our dismissal that we disagreed with the Director's conclusion that the Petitioner established he is an advanced degree professional in accordance with 8 C.F.R. § 204.5(k)(3)(i) as the record lacked a properly certified English language translation of the educational documents. However, that determination did not form the basis of our dismissal because the Petitioner was not on notice of this issue.

vehicles, and specialized equipment." He argued on appeal that his proposed work is nationally important because it "is poised to revolutionize the vehicle and equipment transportation industry within the United States." We concluded that the record did not explain how the business would impact the overall field more broadly beyond its clients on the level of national importance. *See id.* at 889 (providing in relevant part that, to establish eligibility for a national interest waiver, the petitioner must establish that their specific proposed endeavor has national importance). We also determined that the submitted evidence did not support the Petitioner's claim that his business will have significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation.

On motion to reopen, the Petitioner does not assert any new facts and does not submit any evidence. His submission does not meet the requirements of a motion to reopen. On motion to reconsider, the Petitioner asserts we erred in our determination that the submitted evidence did not establish eligibility for the benefit sought. He contends that the record proves he meets all requirements for the national interest waiver and advanced degree professional classification.

In our prior decision, we addressed the relevant evidence and determined it did not demonstrate any broader implications of the Petitioner's proposed endeavor in his field at a level of national importance. *See id.* (stating that national importance is evaluated through consideration of "potential prospective impact" and "broader implications"). We acknowledged the Petitioner's plan to reach a total of 50 employees; $137,624 in net profit; and $2,973,159 in payroll expenses by year five. However, the plan did not explain how these forecasts were calculated or adequately clarify how these projections will be realized, and the record did not contain evidence to support the business plan's financial projections. Further, the record did not illustrate how creating 50 jobs and generating profits as projected in the business plan would have substantial positive economic effects on the level of national importance. *See id.* at 890 (specifying that an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, may well be understood to have national importance). On motion, the Petitioner does not identify any misapplication of law or policy in these determinations.

The Petitioner's submission does not meet the requirements of a motion to reopen. 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 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.