U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34428388

Date: OCT. 17, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner describes himself as a process engineering project manager. He 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 the Petitioner is eligible for, and merits as a matter of discretion, a national interest waiver. We dismissed a subsequent appeal, concluding that the Petitioner did not overcome the Director's findings.[1] 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). 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 argues that we "overlooked crucial evidence," highlighting the previously submitted personal statement, expert opinion, and "probative research" which he claims were offered as evidence of his endeavor's potential to "significantly" impact the economy and community well-being "on a national scale." Contrary to these arguments, the record shows that we provided a comprehensive analysis where we addressed the submitted evidence and explained how it was deficient. For instance, we specifically discussed the Petitioner's personal statement and determined

[1] Despite the Director's favorable finding that the Petitioner qualifies as a member of the professions holding an advanced degree, we questioned whether the Petitioner actually possesses an advanced degree or five years of progressive post-baccalaureate experience in the specialty. 8 C.F.R. § 204.5(k)(2). Although we did not make a final determination on this issue, we informed the Petitioner that he should be prepared to address it in any future NIW filings.

that it focuses on the value of business process management and process engineering, rather than the prospective impact of the proposed endeavor. We also determined that the personal statement neither distinguishes the Petitioner's services from those offered by other project managers nor explains how the proposed endeavor would result in broader implications that extend beyond the Petitioner's employer and its clients. Although the Petitioner disputes this finding on motion, claiming that his endeavor will contribute to the field of process engineering and have "far-reaching implications for the national economy," the record on appeal did not include evidence to support these assertions. Nor is reiterating portions of the personal statement and reasserting prior arguments sufficient to overcome the previously noted deficiencies or establish that the adverse findings we made on appeal were inconsistent with the law or USCIS policy.

We then considered the referenced expert opinion, which we also found to be deficient. We explained that the opinion primarily focuses on project managers as a whole and does not address the details of the proposed endeavor or explain why the endeavor, as opposed to the work of project managers in general, would have national importance. And while the Petitioner cites *Buletini v. INS*, 860 F. Supp. 1222, 1223 (E.D. Mi. 1994), to stress the importance of an expert opinion, the probative value of the expert opinion provided in this matter is significantly diminished given the deficiencies we highlighted in our prior decision and which we have summarized herein. Thus, given our explanation for the adverse findings concerning the expert opinion, the Petitioner has not established that we dismissed the evidence "without valid justification" or that our actions were arbitrary and capricious as claimed.

Further, while the Petitioner contends that we overlooked "probative research," it is unclear what specific research we overlooked. In fact, we acknowledged the Petitioner's submission of various articles and reports and commented on their general content, which we deemed insufficient given that they address aspects of the field of the proposed endeavor, rather than the endeavor itself. We also cited a precedent decision and explained that in a first prong analysis we do not focus on the importance of the field, industry, or profession in which the individual will work; instead, the focus is on "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016).

On motion, the Petitioner highlights two previously submitted articles that address "the need for continual improvement in mail center processes" and "the significant advantages of direct mail marketing," respectively. However, as determined in our prior decision, these articles do not address the Petitioner's specific endeavor and thus they do not support the claim that the endeavor has national importance. And while the Petitioner reiterates claims about labor shortages in the engineering industry, we previously addressed those claims on appeal and need not do so again on motion.

In sum, 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. Consequently, the Petitioner has not met the applicable requirements for a motion to reconsider and the motion will be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.