U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34598572

Date: OCT. 17, 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 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 their eligibility for the requested national interest waiver. We dismissed a subsequent appeal. The matter is now before us on a 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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings (the dismissal of the appeal). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

In our appellate decision, 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). Specifically, we explained that the record did not establish his proposed endeavor of partnering with American universities to market and promote their courses through e-learning on his online platform would result in broader implications to the field at a level commensurate with national importance contemplated in *Dhanasar*. *Id.* And, while we acknowledged the Petitioner's assertions that his endeavor aligned with federal initiatives aimed at improving student outcomes and promoting innovation in higher education through the use of technology, we explained that he did not provide sufficient information or evidence establishing how his endeavor would meaningfully impact these initiatives on a level commensurate with national importance. Additionally, we acknowledged the Petitioner's assertions on appeal that his endeavor would result in economic benefits due to a claimed

increase of educated students, but we concluded that the Petitioner had not shown his specific endeavor had a significant potential to employ U.S. workers or otherwise result in substantial positive economic effects discussed in *Dhanasar*. *Id.* at 890. We also agreed with the Director's discussion regarding the limited information presented in the Petitioner's business plan relating to the prospective employment of U.S. workers and the company's economic impact.

On motion, the Petitioner generally disagrees with our prior decision, asserting that "there were errors of fact and law." As an example of this, the Petitioner points to our agreement with the Director's determination that the business plan did not provide information relating to the company's projected employment, its prospective businesses partners and clients, the anticipated growth of the business, or the location where the Petitioner intended to operate his business. The Petitioner indicates that, in making these conclusions we did not address the letter of intent submitted in response to the Director's request for evidence (RFE), which the Petitioner claims provided detailed financial and employment projections, and showed his company is "financial viab[le]."

However, while we acknowledge the letter of intent provided in response to the RFE provides projected revenue based on the prospective partnership with a Florida marketing agency, the Petitioner did not explain how these projections, even if realized, would result in substantially positive economic effects contemplated in *Dhanasar*. Although 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 the level of national importance. Similarly, the letter of intent does not provide sufficient explanation for the basis of these financial and employment projections, beyond a passing reference to a conversion rate determined based on the Petitioner's experience. And even if the endeavor's revenue and job creation projections were sufficiently explained, they do not establish that his company would operate on a scale rising to the level of national importance.

The Petitioner also states that, following the denial of his petition, he registered his company in the state of Florida, claiming that "this development addresses the concerns raised regarding the operational base of [the company]." But a petitioner must establish eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(12). And, as stated, a motion to reconsider must establish that 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). Accordingly, we will not consider the Petitioner's registration of his company as this occurred after the denial of his petition.[1]

On motion, the Petitioner also claims that the evidence submitted, including the letter of intent from the prospective business partner based in the state of Florida, "demonstrates a clear interest in developing this project [with the initial goal] to reach local educational institutions and those in [c]entral Florida." However, potential interest from a company based in Florida did not establish that Petitioner's company would be based in Florida, nor did the Petitioner claim this on appeal. Accordingly, the Petitioner has not shown that we erred in concluding that the record did not establish

[1] Moreover, we generally do not "consider facts that come into being only subsequent to the filing of a petition." *Matter of Izummi*, 22 I&N Dec. at 176 (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981)). Ultimately, to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008).

where the Petitioner intended to base his company, which is relevant to our evaluation of the prospective economic benefits of his endeavor.

The Petitioner also restates the offerings of his company, which he claims distinguishes his company from traditional online program managers (OPMs), asserting that his company will offer "a unique set of services that support education institutions." However, the services outlined on motion do not overcome our conclusion that the Petitioner has not shown that his company will impact the field more broadly, rather than only benefiting his direct customers and clients. Accordingly, the Petitioner has not shown that we erred in concluding that the record did not establish the national importance of his endeavor as contemplated in *Dhanasar*. *See Dhanasar* at 888-889.

Here, because the Petitioner has not demonstrated how we erred as a matter of law or policy, his motion does not meet the requirements of a motion to reconsider under 8 C.F.R. § 103.5(a)(3). *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (confirming that a person cannot satisfy the requirements of a motion to reconsider by generally alleging error in the prior decision, rather the filing party "must specify the factual and legal issues" that were decided in error). Consequently, we have no basis for reconsideration of our decision, and the Petitioner's motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.