U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34573323

Date: OCT. 18, 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 and an individual of exceptional ability, 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 Petitioner's Form I-140, Immigrant Petition for Alien Workers, concluding that the Petitioner established his underlying eligibility for EB-2 classification, but that the record did not establish he merited a national interest waiver. We dismissed a subsequent appeal after concluding the Petitioner did not establish the national importance of his proposed endeavor as is required to establish he merits a national interest waiver. 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)(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 support of his Form I-140, the Petitioner submitted, in part, a personal statement and a business plan, as well as other documents that are listed in the Director's decision, which we incorporate here by reference. The Director determined the Petitioner did not establish his proposed endeavor was nationally important; that he was well positioned to advance the proposed endeavor; and that on balance, waiving the job offer requirement would benefit the United States, as required by the *Dhanasar* analytical framework. *See Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). With regard to national importance, the Director specifically concluded that the Petitioner had not

established that the potential prospective impact of his proposed endeavor stood to sufficiently extend beyond the individuals he would serve and thus impact the information technology industry or field more broadly. On appeal, we determined that the Petitioner's evidence reflected his own experience and was insufficient to show how his proposed endeavor to operate a business training and consulting business would broadly impact business at a level commensurate with national importance, or have substantial positive economic effects or significant potential to employ U.S. workers. *See Dhanasar*, 26 I&N Dec. at 890.

On motion, the Petitioner resubmits a legal brief from his previous appeal as well as copies of evidence previously submitted in support of his Form I-140, including his personal statement, business plan, and other documents listed in the Director's decision.[1] The Petitioner, however, has not stated any new facts as is required for a motion to reopen. Thus, he has not established that his motion to reopen should be granted as he has not satisfied the filing requirements for such a motion.

The Petitioner also contests the correctness of the Director's decision. He generally claims, regarding the national importance of his proposed endeavor, that the Director did not give enough weight to the significant advantages of his work to the national interest. He further claims that his work is in an area of great intrinsic worth and would make a great contribution to the training and consulting industry which impacts business and social welfare interests across the nation. Finally, he asserts that the Director did not accurately consider evidence regarding the projected impact of his endeavor on social wellbeing, the community, and to job creation.

Initially, we note that a motion to reconsider must establish that *our* prior appellate 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). Thus, while the Petitioner claims the Director's decision was erroneous in law and fact, he does not identify specifically how we erred in our decision on appeal.

Additionally, to the extent the Petitioner reiterates his claims that evidence showing the benefits and intrinsic worth of his work were not given sufficient weight, our review of the record reflects that we fully reviewed, considered, and explained the deficiencies in the Petitioner's evidence, including the evidence he resubmits on motion, in finding that he did not establish his endeavor has the potential to impact businesses or create jobs in the United States at a level demonstrating its national importance. Furthermore, with regard to the intrinsic worth of his work in the training and consulting industry, as we addressed in our previous decision, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake," and the Petitioner has not established that we incorrectly applied this law in our prior decision. *See Dhanasar*, 26 I&N Dec at 889. Accordingly, the Petitioner has not established 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). He therefore has not demonstrated his motion to reconsider should be granted.

[1] The Petitioner states on motion that he provided updated evidence including expert letters, a detailed project plan, and updated achievements and honors. Our review of the record, however, shows that the evidence provided on motion was previously provided in support of his Form I-140 or on appeal.

The Petitioner has not established that reopening and reconsideration is warranted. The combined 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.