U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 34456304

Date: OCT. 24, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner identifies himself as an entrepreneur who is the founding owner of a transport and logistics business. 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 although the Petitioner qualifies as an advanced degree professional, he did not establish eligibility for a national interest waiver under the analytical framework outlined in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). We dismissed a subsequent appeal, concluding that the Petitioner did not overcome the Director's findings on the issue of the proposed endeavor's national importance.[1] We also pointed to inconsistencies concerning the Petitioner's prior employment, which led us to question whether the Petitioner obtained at least five years of progressive post-baccalaureate experience "in the specialty," despite the Director's favorable finding that the Petitioner qualifies as a member of the professions holding an advanced degree. Nevertheless, because we deemed national importance as the dispositive issue on appeal, we did not make a final determination regarding the Petitioner's qualification as a member of the professions holding an advanced degree, and we also reserved any further discussion of the second and third prongs of the *Dhanasar* analytical framework. The matter is now before us on a combined motion 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 combined motion.

First, we will address the Petitioner's motion to reopen. A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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).

[1] The Director determine that the evidence established the substantial merit of the Petitioner's endeavor.

On motion, the Petitioner submits a new statement in which he addresses his prior work experience and our observations on the issue of whether he satisfied the regulatory condition requiring at least five years of progressive post-baccalaureate experience "in the specialty." *See* 8 C.F.R. § 204.5(k)(2). However, as discussed above in our procedural summary of this matter, in our prior decision we did not make a final determination as to whether the Petitioner qualifies as a member of the professions holding an advanced degree. Rather, we dismissed the appeal based on an entirely separate issue concerning the first prong element of the proposed endeavor's national importance, which the Petitioner does not address in his new statement. And although the Petitioner also provides a motion brief, the brief does not identify any new facts concerning the national importance of the proposed endeavor. Accordingly, the Petitioner has not provided a basis for granting a motion to reopen.

Next, we turn to the Petitioner's motion to reconsider. 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 continues to assert that his proposed endeavor has national importance, relying on previously raised arguments as the basis for the motion. For instance, the Petitioner states that "[t]ransportation and logistics are matters of national importance" and that his endeavor would "benefit[] local communities . . . by improving transportation access to remote or underserved areas" as well as having "the potential to make significant contributions to the U.S. economy and society." However, aside from generally disagreeing with our determination on the national importance element, the Petitioner does not specifically identify an instance in which we incorrectly applied the law or USCIS policy in arriving at our decision, which included several adverse findings. For instance, we questioned the reliability of the hiring projections in the Petitioner's business plan, noting that the Petitioner did not explain how he plans to recruit 16 truck drivers in a five-year period given the stated shortage of truck drivers. We also pointed out that the expert opinion letter the Petitioner submitted provided conclusory statements about the importance of the trucking and logistics fields and we determined that the record lacked evidence showing how the economic activity from the proposed endeavor would rise to the level of national importance. The Petitioner did not address any of these findings or explain how we erred in dismissing the appeal.

Lastly, the Petitioner argues that he is well positioned to advance his endeavor and that he has therefore satisfied the second prong under the *Dhanasar* analytical framework. However, as previously noted, we dismissed the appeal based on the issue of national importance and declined to make a final determination on any of the other issues discussed in the denial. As discussed herein, the Petitioner has not established that we erred in dismissing the appeal based on the evidentiary deficiencies pertaining to the national importance element.

In sum, although the Petitioner has submitted a new statement and brief in support of the motion to reopen, he has not established eligibility. And regarding the 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. As stated above, the Petitioner's contentions merely reargue facts and issues we considered in our prior decision. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief

presented on appeal and seek reconsideration by generally alleging error in the prior Board decision"). We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

In light of the deficiencies discussed above, the combined motion to reopen and reconsider 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.