U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39973342

Date: OCT. 24, 2025

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).

Service Center Operations (SCOPS) denied the petition, concluding the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the appeal and four motions to reconsider. The matter is now before us on a fifth motion, a combined motion to reopen and 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 combined motion.

We incorporate by reference our analysis in our prior decisions. By way of summation, the Petitioner proposes to work "as a process engineering project manager via [redacted]," a mail services company. We dismissed the appeal because the record does not establish how the proposed endeavor may have national importance, as contemplated by the precedent decision, *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). We then dismissed the Petitioner's four subsequent motions to reconsider because they did not establish that the respective preceding decisions were based on an incorrect application of law or policy, based on the record at the time we issued them.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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).

On motion to reopen, the Petitioner submits several items of documentary evidence; however, the evidence either does not satisfy the requirements of a motion to reopen, it cannot establish eligibility, or it provides immaterial information. The documents the Petitioner describes as his "work sample" are copies of documents already in the record that he submitted in response to SCOPS' request for

evidence (RFE). A copy of an undated slideshow presentation that identifies him as an engineering process project manager at [redacted], Inc., reiterates generalized information already in the record regarding mail services and logistics, with abstract and unsubstantiated claims such as "my work addresses key national priorities," including "job creation," without elaborating on the nature and number of jobs created in any particular location and meaningful context for those jobs created in the location(s) that may support a conclusion that the proposed endeavor may have significant potential to employ U.S. workers, as contemplated by the first *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. Therefore, neither the "work sample" nor the slideshow presentation provide documentary evidence of new facts. *See* 8 C.F.R. § 103.5(a)(2).

The Petitioner also submits copies of media publications that provide generalized information regarding engineering, manufacturing, labor, and postal services. However, many of these documents are dated after the Petitioner filed the Form I-140, Immigrant Petition for Alien Workers, in 2022, and they present a set of facts that did not exist at that time; therefore, they cannot establish eligibility. *See* 8 C.F.R. § 103.2(b)(1) (providing that a petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971) (providing that a visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts); *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998) (providing that a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to U.S. Citizenship and Immigration Services requirements). To the extent that some of the copies of media publications the Petitioner submits on motion to reopen present a set of facts that both existed at the time the Petitioner filed the Form I-140 but are not already in the record, those documents nevertheless do not address the Petitioner, the specific endeavor he proposes to undertake, and how the specific endeavor may have the type of broader implications indicative of national importance as contemplated by the first *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 889. Because the Petitioner does not state a new, material fact, supported by documentary evidence that can establish eligibility, the motion does not satisfy the requirements of a motion to reopen and it will be dismissed. 8 C.F.R. §§ 103.5(a)(2), (4).

Next, 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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion to reconsider, the Petitioner references two items of evidence: an opinion letter he submitted in response to SCOPS' RFE, and a personal statement he improperly submitted with the preceding motion to reconsider, which, unlike a motion to reopen, excludes new affidavits and other documentary evidence. *See* 8 C.F.R. §§ 103.5(a)(2)-(3). The Petitioner asserts that the opinion letter "not only articulates the national importance of [his] specific proposed endeavor with clarity and precision but also does so by tying it directly to recognized national priorities, economic trends, and strategic industries." He also asserts that our decision dismissing the preceding motion incorrectly applies *Matter of Dhanasar*'s national importance criteria; the preponderance of evidence standard of *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010); and *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010), which the Petitioner characterizes as "instruct[ing] that the evidence must be considered in totality, and not discounted through piecemeal analysis or rigid categorical exclusion."

We first note that the Petitioner mischaracterizes *Kazarian* as "clarify[ying] that the evaluation of the importance of the proposed endeavor should be conducted considering the totality of the evidence." *Kazarian* does not address analysis of a proposed endeavor of an individual seeking a national interest waiver; rather, it addresses our analysis of the record for a theoretical physicist seeking classification as an individual of extraordinary ability, a separate visa classification contemplated by section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A). *Kazarian*, 596 F.3d at 1117. *Kazarian* prohibits "novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5," as applied to extraordinary ability petitions. *Id.* at 1121. The Petitioner does not clarify the relevance of *Kazarian* to our preceding motion decision—or to the analysis of national interest waiver petitions in general.

We have reviewed the record in its entirety, including our prior decisions. Despite the Petitioner's conclusory statements that our decision dismissing the preceding motion to reconsider misapplied *Dhanasar* and *Chawathe*, our prior decisions explain why, under a preponderance of evidence standard, the opinion letter "is of little probative value, . . . focus[ing] on the Petitioner's field and neglect[ing] to concentrate on the specific proposed endeavor to explain its national importance."

In turn, the Petitioner asserts that the personal statement he improperly submitted with the preceding motion to reconsider "directly address[es] how the proposed endeavor satisfies the legal standards outlined in *Matter of Dhanasar*, *Matter of Chawathe*, and *Kazarian v. USCIS*." On the contrary, the statement indirectly addresses the first of three *Dhanasar* prongs, each of which must be satisfied, *see Matter of Dhanasar*, 26 I&N Dec. at 889-90, but it neither directly nor indirectly addresses *Chawathe* and *Kazarian*. Moreover, because the Petitioner improperly submitted this statement as a new affidavit in support of the preceding motion to reconsider, it was not properly in the record at the time of our prior decision on that motion, which in turn addressed only information in the record at the time of the underlying motion to reconsider. *See* 8 C.F.R. §§ 103.5(a)(2)-(3) (providing that a motion to reopen addresses new facts supported by affidavits and other documentary evidence, whereas a motion to reconsider assesses the record at the time of the preceding decision). The Petitioner does not identify a law or policy that we may have misapplied to 8 C.F.R. §§ 103.5(a)(2)-(3) in disregarding the improperly submitted new statement at the time of our decision on the prior motion. Even if this statement may now be deemed to have been in the record at the time of the decision this motion seeks us to reconsider despite the statement's improper submission, it would bear minimal probative value and it would not establish eligibility because it consists of generalized and unsubstantiated assertions, similar to those discussed above regarding the newly submitted slideshow presentation.

Because the Petitioner does not establish that we misapplied a law or policy to the record at the time of our prior decision, the motion to reconsider will be dismissed. 8 C.F.R. §§ 103.5(a)(3)-(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

NOTICE: Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.