U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33566014

Date: SEPT. 19, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an industrial and quality engineer, seeks employment-based second preference (EB-2) classification as either a member of the professions holding an advance degree or an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 the Petitioner had not established eligibility for the underlying EB-2 classification or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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.

In our decision dismissing the appeal, which we incorporate here by reference, we agreed with the Director's overall determination that the Petitioner did not establish he qualifies for the underlying classification as either an advanced degree professional or an individual of exceptional ability. Regarding exceptional ability, we withdrew the Director's adverse determination relating to a license or certification to practice the profession at 8 C.F.R. § 204.5(k)(3)(ii)(C). And while the Petitioner now met three of the six criteria, we did not remand the matter to the Director to perform a final merits determination as he had not otherwise established eligibility for the waiver of the job offer requirement in the national interest.

With regard to the national interest waiver, we adopted and affirmed the Director's determination that the Petitioner did not establish his proposed endeavor satisfied the national importance element of the first prong under *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). Specifically, we noted that the Director thoroughly evaluated the Petitioner's claims relating to the first prong's national importance element. Further, we stated that, even if we did not adopt and affirm the Director's determination, we would have concluded that the Petitioner abandoned this issue on appeal when he

effectively reproduced the identical text he presented to the Director in response to the request for evidence (RFE).

A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy; and establish that the decision was incorrect based on the evidence in the record 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 requests "a thorough evaluation of his" exceptional ability claims since we withdrew the Director's determination regarding the licensure requirement and, therefore, "given the error in the evaluation of the submitted evidence and the importance of a comprehensive review, a reversal and remand for a thorough reevaluation of the petitioner's qualifications is justified." The Petitioner cites to *Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 743 (1985) and explains that the Supreme Court determined "if relevant factors have not been considered, the remedy should be to remand the case back to the agency for further investigation or a more detailed explanation." But, as noted above and as we explained in our prior decision, because a review of other dispositive issues addressed in the appeal reflected the Petitioner would remain ineligible even if we were to return the case to the Director, remanding would serve no purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).

In addition, the Petitioner asserts he identified a legal error committed by the Director, namely, "rejecting relevant, probative and credible evidence" and generally alleges the Director "failed to adequately assess evidence submitted to demonstrate the national importance of the proposed endeavor." But beyond the Petitioner's vague assertions, he does not demonstrate how. And the Petitioner's general disagreement with the Director's assessment of evidence does not establish that the Director "rejected" it.

The Petitioner further contends that "[r]ather than "abando[ning] the issue" by reproducing the text presented to the Director in response to the RFE, the Petitioner strategically reiterated his arguments to emphasize the Director's oversight in evaluating the evidence." The Petitioner, however, overlooks the fact that we adopted and affirmed the Director's reasoning as it related to the first prong of the *Dhanasar* analysis.

The Petitioner disagrees with our conclusions without demonstrating how we erred as a matter of law or policy. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision). Furthermore, we reviewed the record and determined that the Director's decision considered and thoroughly analyzed the evidence and claims concerning the impact of his proposed endeavor and correctly concluded the Petitioner had not established its national importance.

Here, the Petitioner does not demonstrate how our appeal decision was based on an incorrect application of law or policy based on the evidence in the record. As noted, our review is limited to reviewing our most recent decision, which in this case is our dismissal of the appeal, not the Director's denial. Again, simply disagreeing with our conclusions, without showing how we misapplied law or pointing to policy that contradicts our analysis of the evidence, is not sufficient to reconsider our decision.

Because the Petitioner did not demonstrate that we erroneously applied law or policy in dismissing his appeal, the Petitioner has not established that his motion satisfies the requirements for a motion to reconsider under 8 C.F.R. § 103.5(a)(3). Therefore, we will dismiss the motion.

ORDER: The motion to reconsider is dismissed.