U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34042227

Date: SEPT. 19, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a wholesale and retail food distributor, seeks employment-based second preference (EB-2) 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 EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Texas Service Center Director denied the petition, concluding the Petitioner had not demonstrated that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed his subsequent appeal. The matter is now before us on a combined motion to reopen and motion to reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motions.

Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). 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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner contends we erred in summarily dismissing his appeal and asserts that his brief was timely delivered to our office in September 2023. However, as evidenced by the copy of our decision included on motion, we did not summarily dismiss the appeal. Rather, we addressed the Petitioner's brief and provided a full analysis on whether the Petitioner's proposed endeavor met the national importance element of the first prong of *Dhanasar*,[1] and ultimately concluded that it had not.

[1] *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services may, as matter of discretion, grant a national interest waiver if:

Here, the Petitioner did not address our most recent decision. Consistent with the above requirements for motions to reopen and motions to reconsider, because the Petitioner does not provide new facts to establish that we erred in dismissing the appeal or demonstrate that our prior decision was incorrect, the motions must be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

- The proposed endeavor has both substantial merit and national importance,
- The individual is well-positioned to advance the proposed endeavor, and
- On balance, waiving the job offer requirement would benefit the United States.