U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39600354

Date: SEP. 24, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, an English as a second language teacher, 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 that the Petitioner did not establish that a waiver of the EB-2 classification's job offer requirement would be in the national interest. Specifically, SCOPS determined that the Petitioner did not demonstrate that his proposed endeavor is of substantial merit and national importance; that he is well positioned to advance his proposed endeavor; and that, on balance, it would be beneficial to the United States to waive the job offer requirement and thus a labor certification. We dismissed a subsequent appeal, concurring with SCOPS that the Petitioner had not demonstrated the national importance of his proposed endeavor and reserving our opinion as to whether the record establishes the remaining requirements under the analytical framework introduced by *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). We also dismissed three subsequent motions to reconsider. The matter is now before us on a fourth motion to reconsider.[1]

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.

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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

[1] The Petitioner indicated in Part 2 of Form I-290B that he was filing a combined motion to reopen and motion to reconsider, but refers only to a motion to reconsider in his brief.

On motion, the Petitioner contests the correctness of our prior decision. He states that the denial of his petition "overlooks key considerations regarding the substantial merit and national importance of English as a Second Language (ESL) education," and fails "to adequately consider the ongoing and urgent need for qualified ESL educators in the United States." He also suggests that in light of the decision in *Loper Bright Enterprises v. Raimundo*, 144 S.Ct. 2244 (2024), the *Dhanasar* analytical framework "may no longer stand as guiding precedent."[2] However, our review on motion is limited to our most recent decision. The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding," which in this case is our dismissal of the Petitioner's third motion to reopen. 8 C.F.R. § 103.5(a)(1)(i), (ii). The Petitioner's assertions in his current motion merely reargue facts and issues we have already considered in our previous decisions. *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"). In fact, aside from a few new paragraphs in its introductory section and in its discussion of the third prong of the *Dhanasar* analytical framework that are not responsive to our most recent decision, the brief is identical to that submitted with the previous motion.[3] We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

On 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. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

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.

[2] The Petitioner has not provided any support for this assertion. Further, when a "decision is committed to agency discretion (like the adjudication of a national interest waiver), *Loper Bright Enterprises'* mandate does not apply." *See Onyenanu v. Garland*, No. 8:23-CV-138, 2024 WL 5078098, at *6 n 5 (M.D. Fla. Dec. 11, 2024).

[3] This includes a parenthetical in the eighth page of the brief which misidentifies the Petitioner's proposed endeavor as "providing necessary medicine and related education to underserved communities through telehealth innovations such as direct to consumer telepharmacy consulting work."