U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34366019

Date: SEP. 30, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (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).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the Petitioner's subsequent appeal. The matter is now before us on a motion to reconsider. 8 C.F.R. § 103.5.

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 to reconsider.

A motion to reconsider must establish that our 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 do not consider new facts or evidence in a motion to reconsider. By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i).

On motion, the Petitioner submits a brief and contends the Director made several errors in the decision that were later adopted and repeated by the AAO. The Petitioner requests that we reconsider our determination because we "held Petitioner to an inappropriately high standard," and reminds us that evidence must be examined "both individually and within the context of the totality of the evidence." The Petitioner reiterates that the evidence submitted with the petition and in response to the request for evidence established the national importance of his proposed endeavor.

In our decision dismissing the appeal, we agreed with the Director that the Petitioner did not meet the first prong of the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). We explained that the Director considered the Petitioner's claims under the three prongs of

Dhanasar and determined that he established the substantial merit of his proposed endeavor. Regarding national importance, we further explained that the Director's decision reviewed and analyzed the Petitioner's claims of eligibility, including letters of support, industry reports and articles, and a business plan. Specifically, we determined that the Petitioner did not establish that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We determined that the Petitioner did not provide any new evidence or arguments on appeal to overcome the Director's determination.

We also reserved the Petitioner's appellate arguments regarding his eligibility under *Dhanasar's* second and third prongs, as considering them would have served no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). For the sake of brevity, we incorporate our previous analysis of the record and will repeat only certain facts and evidence as necessary to address the Petitioner's assertions on motion.

The Petitioner alleges we did not apply the proper standard of proof in this case, instead imposing a higher standard. The standard of proof governing immigration benefit requests is "preponderance of evidence." *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met its burden under the preponderance standard, we evaluate whether a petitioner's claims are "more likely than not" or "probably" true, but also consider the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Petitioner does not further explain or identify any specific instance in which we applied a standard of proof other than the preponderance of evidence in dismissing the appeal. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

On motion, the Petitioner requests that we review the evidence submitted with the petition and further reiterates that the proposed endeavor has national importance to the "welfare and economy of the United States" as the industrial engineering industry plays a vital role in supporting the country's economy by optimizing processes, systems, and organizations. However, merely working in an important field or profession is insufficient to establish the national importance of the proposed endeavor, as we explained in *Dhanasar*. *Id.* at 889. In determining whether the proposed endeavor has national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* We thoroughly discussed the Petitioner's claims on appeal under the relevant *Dhanasar* framework. The Petitioner has not provided any legal basis for our findings being incorrect.

The Petitioner has not established proper grounds for reconsideration. Our prior decision properly analyzed the Petitioner's assertions. The Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; the motion must demonstrate 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 seeks reconsideration by generally alleging error in the prior decision).

Accordingly, although we acknowledge that the Petitioner submits a brief, we determine that the Petitioner does not directly address the conclusions we reached in our immediate prior decision or provide reasons for reconsidering of those conclusions. Likewise, the brief in support of the current motion lacks any cogent argument as to how we misapplied the law or USCIS policy in dismissing the appeal. We thoroughly analyzed the Petitioner's evidence and arguments and provided a complete decision reaching the correct conclusion.

In this matter, the Petitioner has not overcome our prior decision or shown proper cause to reconsider this matter. 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.