U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19411298

Date: DEC. 8, 2021

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a healthcare and life sciences management specialist[1], seeks second preference 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 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 that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner appealed the matter to us, and we dismissed the appeal. We also dismissed the subsequently filed motion to reopen. The matter is now before us on a motion to reconsider. With the motion, the Petitioner submits a brief.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion.

I. LAW

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). The filing before us is not a motion to reconsider the denial of the petition. Instead, it is a motion to reconsider our most recent decision. In other words, we examine any new arguments to the extent that they pertain to our prior dismissal of the Petitioner's motion to reopen. Therefore, we cannot consider new objections to the earlier denial, and the Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding.

A motion to reconsider must 1) state the reasons for reconsideration, 2) establish that the decision was based on an incorrect application of law or USCIS policy, and 3) 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). The Board of Immigration Appeals (BIA) generally provides that a motion to reconsider asserts that at the

[1] In his motion to reopen, the Petitioner stated that he is "currently a market research manager."

time of the previous decision, an error was made. It questions the decision for alleged errors in appraising the facts and the law. The very nature of a motion to reconsider is that the original decision was defective in some regard. *See Matter of Cerna*, 20 I&N Dec. 399, 402 (BIA 1991).

II. ANALYSIS

As we explained in our prior dismissal, a motion to reopen is based on documentary evidence of new facts and we may grant the motion if it satisfies the requirements at 8 C.F.R. § 103.5(a)(2) and *establishes eligibility for the requested benefit* (emphasis added). In dismissing the motion, we discussed the submitted evidence and concluded that it did "not show the national importance of his specific proposed endeavor," as required by the first prong of the *Dhanasar* analysis and, thus, the Petitioner had "not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion." *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016),[2] states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[3], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[4]

In the motion to reconsider, the Petitioner disagrees with our prior decision, but fails to establish that it was 1) based on an incorrect application of law or USCIS policy and 2) incorrect based on the evidence in the record at the time of the decision. For example, the Petitioner argues that to determine national importance we should consider the endeavor's benefit to society.

As we explained in *Dhanasar*,

> The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. Evidence that the endeavor has the potential to create a significant economic impact may be favorable but is not required, as an endeavor's merit may be established without immediate or quantifiable economic impact. For example, endeavors related to research, pure science, and the furtherance of human knowledge may qualify, whether or not the potential accomplishments in those fields are likely to translate into economic benefits for the United States.
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> In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. An undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances. But we do not evaluate prospective impact solely in geographic terms. Instead, we look for broader implications. Even ventures and undertakings that have as their focus one geographic area of

[2] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).
[3] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).
[4] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

> the United States may properly be considered to have national importance. In modifying this prong to assess "national importance" rather than "national in scope," as used in NYSDOT, we seek to avoid overemphasis on the geographic breadth of the endeavor. An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.

While we may agree with the Petitioner that *Dhanasar* does not provide an exhaustive list of examples to establish national importance, he has not sufficiently established that the societal impact of his proposed endeavor rises to the level of national importance consistent with the analysis provided in our precedent decision. It is also important to note that in our dismissal of the Petitioner's appeal, we affirmed the Director's determination that his endeavor has substantial merit citing to his explanation of the proposed endeavor and the "submitted information about prostate cancer, [his employer's] products and services, the role of entrepreneurs in driving global economic growth, the lack of an understanding of translational science as an obstacle to drug development, and the necessity for innovation in the healthcare industry."

The Petitioner also asserts that we should consider "information about [his] current and prospective positions to illustrate the capacity in which [he] intend[s] to continue to work" to establish the national importance of his proposed endeavor. However, we specifically informed the Petitioner that "we will consider information about his current and prospective positions to illustrate the capacity in which he intends to work." Notably, not only did he use the same language from our decision in both his current and prior brief, but he appeared to acknowledge and approve our consideration of this information in his motion to reopen as he quoted it directly, followed by the word "Yes!."

Finally, the Petitioner asserts that the articles he submitted were related to his specific endeavor and not the industry or profession as a whole because "commercialization of translational research is not an industry, neither is it a profession, it is an endeavor or an undertaking." As we explained, however, the provided evidence, such as the submitted articles, "relates to the overall importance of the commercialization and innovation stage from research *rather than identifying and establishing the national importance of his specific proposed endeavor.*" (Emphasis added).

Without more, we cannot conclude that the Petitioner has demonstrated the national importance of his proposed endeavor. In addition, the Petitioner has not established that our prior decision, the dismissal of his motion to reopen, was based on an incorrect application of law or USCIS policy as required by 8 C.F.R. § 103.5(a)(3).

ORDER: The motion to reconsider is dismissed.