



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 10621534

Date: MAR. 26, 2021

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks second preference immigrant classification as 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not qualify for classification as an individual of exceptional ability, and 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.

We dismissed the Petitioner's appeal. Contrary to the Director's determination, we found that the Petitioner had established that he qualified for the underlying immigrant classification as an individual of exceptional ability, but 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 subsequently filed a motion to reconsider, which we dismissed. The matter is again before us on a second motion to reconsider.

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

A motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

In our previous decision, we determined that although the Petitioner qualifies for classification as an individual of exceptional ability, he had not established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. Specifically, we concluded that the Petitioner had not sufficiently demonstrated the national importance of his proposed endeavor and therefore he did not meet the first prong of the Dhanasar analytical framework.

In discussing the evidence offered in support of the first motion, we noted in our previous decision that the Petitioner did not contest our findings relating to any specific documentation or offer further arguments demonstrating that our analysis under Dhanasar's first prong was in error. We noted that the Petitioner instead attempted to re-characterize his proposed endeavor from coordinating a school for bodyboarding and environmental awareness¹ to that of an environmental engineer, which constituted a material change to the petition.² Nevertheless, we reviewed the Petitioner's personal statement submitted on motion, where he claimed that his work as an environmental engineer is aimed at coastal restoration and conservation, but determined that he did not show that this proposed endeavor stands to sufficiently extend beyond his environmental engineering projects to impact the field more broadly than his specific coastal restoration and conservation programs. Accordingly, we concluded that the Petitioner had not demonstrated that his proposed work meets the "national importance" element of the first prong of the Dhanasar framework.

With the present motion, the Petitioner submits another personal statement claiming that he meets all three prongs of the Dhanasar analytical framework. In his statement, he claims that his work will benefit the economy and impact education, research, health, and culture. He also references previously submitted documentation, and recites his past accomplishments, education, skills, and plans for the future. He concludes in this personal statement that he clearly qualifies for the requested classification.

The Petitioner, however, did not offer any arguments or refer to any legal authority to demonstrate that we erred in denying his prior motion. A moving party must specify the factual and legal issues that were decided in error or overlooked in the decision or must show how a change in law materially affects the prior decision. *Matter of O-S-G*, 24 I&N Dec. 56, 60 (BIA 2006).

Here, the Petitioner does not contend that our previous decision denying the motion was made in error in accordance with an incorrect application of law or policy, and does not offer any arguments demonstrating that our analysis under Dhanasar's first prong was in error. As noted above, a motion to reconsider must include specific allegations as to how we erred as a matter of fact or law in our prior decision. Because the Petitioner did not raise such allegations of error, we will deny the motion to reconsider.

III. CONCLUSION

The Petitioner's motion does not establish that our prior decision was based on an incorrect application of law or policy. As the Petitioner has not met the first prong set forth in the Dhanasar analytical framework, we find that he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The motion to reconsider is dismissed.

¹ Part 6 of his Form I-140, Immigrant Petition for Alien Worker, identified his proposed employment as "Director of a proposed school for body-boarding and environmental studies."

² A petitioner may not make material changes to his petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998).