U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18104284

Date: SEP. 21, 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 legal administrator, seeks second preference immigrant classification as an advanced degree professional and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this employment-based, "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 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, concluding that while the Petitioner had established that he was an advanced degree professional, he was not eligible for a national interest waiver of the job offer.[1] The matter is now before us on a motion to reopen and a motion to reconsider. On motion, the Petitioner submits a brief and a personal statement in support of his assertion that he qualifies for a national interest waiver.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motions.

I. MOTIONS

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In addition, a motion to reconsider must (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 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.

[1] *See* In Re: ID# 8847145 (AAO FEB. 11, 2021).

II. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[2] *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion, 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

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[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*).

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate 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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate 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.[3]

III. ANALYSIS

As an initial matter, we note that the review of any motion is narrowly limited to the basis for the prior adverse decision. Accordingly, we examine any new facts and arguments to the extent that they pertain to our prior dismissal of the Petitioner's appeal.

On motion, the Petitioner submits a brief and a personal statement explaining why he believes he is qualified for a national interest waiver. However, the Petitioner does not provide new facts related to our prior decision, nor has he demonstrated that we erred in our previous analysis based on the record before us on appeal.

The Petitioner intends to work as a legal administrator. In our prior decision, we noted that although the Director's decision stated that the Petitioner had met the requirements of *Dhanasar's* first prong, it provided no rationale for the finding. Upon *de novo* review, we determined that the Petitioner did not show how he intended to develop improved processes or advances either to the field of legal administration or to the practice of law that would result in national or global implications within those particular fields. Additionally, we noted that while the Petitioner indicated that his endeavor would ultimately involve practicing law with a partner, the record did not elaborate on how many other U.S. workers would be employed as a result of the Petitioner working as a legal administrator or ultimately as an attorney, nor did the record show that such work would have potential, substantial positive economic effects, and whether those effects would be in an economically depressed area. We concluded that the Petitioner did not establish that the proposed endeavor has both substantial merit and national importance, as required by the first *Dhanasar* prong, and reserved our opinion regarding whether the record satisfies the remaining *Dhanasar* prongs.

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

A. Motion to Reopen

A motion to reopen is based on documentary evidence of new facts. 8 C.F.R. § 103.5(a)(2).

On motion, the Petitioner submits a two-page personal statement, titled "Supplemental Affidavit," which restates his academic and professional accomplishments to date. Regarding his future work, the Petitioner states as follows:

> As a legal administrator, I could assist staff attorneys with the client interview, do legal research, draft correspondence, prepare and assemble documents for submission to Court, and gather evidence and legal authorities for briefs. My dedication in law has not only theoretically will [*sic*] improve the legal education of this country in the future but most importantly has in the process completely and realistically re-created the young lives of law student's worth living. Law will be an extremely challenging and competitive career to make but I remain unwavering in my belief that I am competent and driven enough to excel at it.

He further states that he believes that continuing a career in law in the United States "would be stimulating, personally challenging but overall, very fulfilling, and of national importance as well as offering a string basis for a career in the profession for the future." He states that "in addition to 'enhancing the U.S. business industry' and 'helping to improve cross-border business transactions,' my proposed endeavor offers substantial foreign investment activities to the nation, as Philippines (home country) is one of key investors within the nation's food industry and import sector."

In our previous decision, we noted that the Petitioner's ultimate model or plan for future activities was to pass the California Bar Examination and become a lawyer. In the brief accompanying his motion, the Petitioner states that his dream of becoming a lawyer and setting up a law firm "were just an option," and he intended to work as a legal administrator for an existing law firm for at least two years to gain relevant experience.

While his assertions are noted, the Petitioner does 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. Our appellate decision concluded that while the Petitioner's statements reflected his intention to provide legal administration services to his employers until such time that he could establish his own law firm, he had not offered sufficient information and evidence to demonstrate that his proposed endeavor had substantial merit, or that the prospective impact of his proposed endeavor rises to the level of national importance. We further determined that without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record did not show that benefits to the U.S. regional or national economy resulting from the Petitioner's legal services would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*.

On motion, the Petitioner does not offer new facts or evidence relevant to our aforementioned findings. Instead, the Petitioner generally claims in both his brief and accompanying personal statement that his dedication to law will improve the legal education United States and will enhance U.S. business by promoting cross-border business transactions. These assertions alone do not demonstrate the national

importance of his proposed endeavor, or that his proposed endeavor has substantial merit. The Petitioner's motion does not include new facts supported by documentary evidence that overcome the grounds underlying our previous decision and that render him eligible under the first prong of the *Dhanasar* analytical framework.

B. Motion to Reconsider

A motion to reconsider must specify the factual and legal issues that were decided in error or overlooked in our prior decision.

Here, the Petitioner asserts in his brief that our determination that he intended to work as a legal administrator until he passed the State Bar of California and became a lawyer was erroneous. In our prior decision, we noted that the Petitioner specifically stated, "I intend to work as legal administrator in a [l]aw [f]irm or organization . . . until such time I have taken the California Bar Examination and become a lawyer." We further noted that the record contained a fictitious business name statement filed in September 2019 and valid for five years for the business name of "[E-L-] (J.D) [*sic*] and Associates," indicating the Petitioner's address of record as the principal place of business. Considered collectively, we acknowledged that the Petitioner's ultimate goal was to establish his own law firm and practice law once he passed the bar exam. On motion, the Petitioner asserts that, contrary to our determination, he "intend[s] to work in a highly respected and established law firm for the advancement of my legal career opportunities for at least two years."

We recognize the Petitioner's assertion that he intends to initially work as a legal administrator in a law firm to gain relevant knowledge that will ultimately help advance his own legal career. Whether he is providing services as a legal administrator or ultimately as a lawyer is somewhat irrelevant, however, as we previously acknowledged and again agree that his proposed endeavor is to provide legal services to his employers and clients. The question here is whether his proposed endeavor has substantial merit and national importance.

In dismissing the appeal, we determined that the Petitioner did not establish how the endeavor would further human knowledge through research, had the potential to create a cultural impact, improve health or education, or other factors that would support a conclusion that the proposed endeavor has substantial merit. *See Dhanasar*, 26 I&N Dec. at 889. We further determined, after considering the entirety of the Petitioner's plan for future activities, that the record did not demonstrate that his proposed endeavor had national importance.

On motion, the Petitioner does not directly address or contest our determination that he did not establish that the proposed endeavor has substantial merit. While the Petitioner's general assertion of error regarding our determination regarding the endeavor's national importance is noted, he does not cite to any relevant law, regulation, or precedent establishing that our previous findings were based on an incorrect application of the law, regulation, or USCIS policy. Nor does the motion demonstrate that our decision was erroneous based on the evidence before us at the time of the decision. In our prior decision, we determined that the Petitioner did not show that his proposed endeavor would result in national or global implications within the field of legal administration or the practice of law. Here, the Petitioner does not contest our findings or offer further arguments demonstrating that our analysis under *Dhanasar*'s first prong was in error. The Petitioner instead broadly claims that the previously

submitted documentation establishes eligibility, and emphasizes that his primary aim, as outlined in his personal statement, is to promote cross-border commercial activities and legal administration for business organizations.

The Petitioner has not met the requirements for a motion to reconsider as he has not shown that we erred in our previous analysis based on the record before us on appeal. Further, the motion to reconsider does not establish that our previous findings were based on an incorrect application of law, regulation, or USCIS policy, and the Petitioner does not refer to any legal authority to demonstrate that we erred in denying his appeal. The Petitioner does not argue or point to how we incorrectly applied law or policy in our prior decision, as required for a motion to reconsider. Disagreeing with our conclusions without showing that we erred as a matter of law or pointing to policy that contradicts our analysis of the evidence is not a ground to reconsider our decision. *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 may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision). Here, the Petitioner did not demonstrate that we erred in either misapplying law or policy or failing to address prior arguments or evidence. Accordingly, the Petitioner has not demonstrated that his proposed work meets the "substantial merit" and "national importance" elements of the first prong of the *Dhanasar* framework.[4]

Accordingly, the Petitioner has not shown proper cause for reopening the proceedings or reconsidering our decision on the issue of whether he qualifies for a national interest waiver.

IV. CONCLUSION

The Petitioner's motions do not include new information or evidence that overcomes the grounds underlying our previous decision and do not show that our previous decision was based on an incorrect application of law or policy.[5] The record does not demonstrate that the Petitioner has met the first prong set forth in the *Dhanasar* analytical framework, and we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[4] Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

[5] The regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires the motion to be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceedings and, if so, the court, nature, date, and status or result of the proceeding." In addition to the deficiencies noted above, the Petitioner did not include the required statement; therefore, his motion does not meet the applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).