U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20640460

Date: APR. 19, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, a business management consultant, 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 Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but 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. We dismissed the subsequent appeal, concluding that the record does not establish that the proposed endeavor would have national importance, reserving our opinion on whether the record establishes the Petitioner is well-positioned to advance the endeavor and whether, on balance, it would be beneficial for the United States to waive the requirements of a job offer and thus of a labor certification. On motion to reconsider, the Petitioner asserts that we misapplied case law and that he is eligible for the requested benefit.

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

I. LAW

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.

II. ANALYSIS

The Petitioner asserts on motion to reconsider that we "applied the wrong analogy to the applicable caselaw and wrong standard of proof to the case by concluding that the [P]etitioner did not establish that the proposed endeavor has national importance." Generally, the Petitioner selects passages from

our prior appeal decision and asserts that our precedent decision, *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), supports the assertions he made on appeal. We disagree.

First, with regard to the first *Dhanasar* prong, the Petitioner specifically cites *Dhanasar* for the proposition that "we do not evaluate prospective impact [of a proposed endeavor] solely in geographic terms. Instead, we look for broader implications. Even ventures and undertakings that have as their focus one geographic area of the United States may properly be considered to have national importance." *Id.* at 889. However, the Petitioner does not elaborate on how our decision may have improperly limited our evaluation of the proposed endeavor solely in geographic terms. Instead, for example, we observed:

> The proposed endeavor of managing [a] business consulting company and providing business consulting services to other companies benefits those companies and clients. However, the record does not establish how the endeavor would have broader implications in terms of significant potential to employ U.S. workers or have substantial positive economic effects, beyond the Petitioner's employer and clients, as contemplated by the first *Dhanasar* prong.

Thus, we did not evaluate the proposed endeavor's prospective impact solely in geographic terms in our prior decision. Therefore, the Petitioner has not demonstrated that we misapplied *Dhanasar* in this respect. *See* 8 C.F.R. § 103.5(a)(3).

Next, the Petitioner cites *Dhanasar* for the proposition that, "[a]n 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." *Dhanasar*, 26 I&N Dec. at 890. The Petitioner reasserts on motion that this statement implies a "'significant potential to employ U.S. workers[,]' which is not the same as 'potential to employ a significant number of U.S. workers[,]' as the 'significance' is in the 'potential' or 'probability,' not in the 'number of jobs' the endeavor may create." We find no error in our analysis in the underlying decision that the focus of the first *Dhanasar* prong is on the significance of the potential economic impact or broader implications of a proposed endeavor, and whether that rises to the level of a substantial positive economic effect. *Id.* at 889-90. The Petitioner has not demonstrated that we misapplied *Dhanasar* in that respect. *See* 8 C.F.R. § 103.5(a)(3). As we stated in our appeal decision, the record lacks evidence establishing how the proposed endeavor's potential to employ between four and eight direct workers, and indirectly contribute toward up to 44 jobs in 22 industries, has the potential to create a significant economic impact or have broader implications, rising to the level of a substantial positive economic effect as contemplated by *Dhanasar*. *See id.* at 889-90.

Relatedly, on motion, the Petitioner asserts that *Dhanasar* is ambiguous regarding "a certain number of jobs or a certain amount of federal, state, local, and payroll taxes" that may be "decisive in establishing the substantial positive economic effects." Substantial positive economic effects, as contemplated by *Dhanasar*, are a function of the scope of a proposed endeavor; economic effects that rise to the level of substantial vary between a particular metropolitan area and a rural area, for example, and even from one neighborhood to another within a particular area. As noted in our prior decision, petitioners bear the burden of articulating how they satisfy eligibility criteria, *see* section 291 of the Act, 8 U.S.C. § 1361, such as whether a proposed endeavor's potential economic effects are

substantial, given the scope of the particular endeavor. Simply providing a number of workers to be employed and taxes to be paid, without more, does not provide sufficient context regarding whether the endeavor has the potential to create a significant economic impact or have broader implications, rising to the level of a substantial positive economic effect as contemplated by *Dhanasar*. *See id.* at 889-90. The Petitioner has not demonstrated that we misapplied *Dhanasar* in this respect. *See* 8 C.F.R. § 103.5(a)(3).

Next, the Petitioner asserts that we did not apply a preponderance of evidence standard, *see, e.g., Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010), to his general statements on appeal, such as that his endeavor will "help American businesses to be inserted in the Brazilian marketplace, expanding their revenues through exportation." The Petitioner further asserts:

> [I]f the endeavor would develop U.S.-Brazil trade and help small businesses and businesspeople, if it has the potential to assist qualified Brazilian companies to expand their business in U.S., help U.S. small business to large corporations break into the highly complex market of Brazil and expand their revenues through export, it is reasonable to conclude that the endeavor does have broader implications, beyond the business itself and its clientele and employees, fueling the economy in several ways.

A petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Id.* In other words, a petitioner must show that what it claims is "more likely than not" or "probably" true. To determine whether a petitioner has met his burden under the preponderance standard, we consider not only the quantity, but also 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). The Petitioner generally states that the endeavor will involve an unspecified amount of trade between the United States and Brazil and that the Petitioner's clients will generally "expand their revenues through export." These statements do not provide sufficient details about the endeavor, the clients, the nature of their business, the level of revenue expansion, and other relevant, probative, and credible information that could establish that it is more likely than not that the results would create substantial positive economic effects or other broader implications that rise to the level of national importance, as contemplated by *Dhanasar*. 26 I&N Dec. at 889-90. Again, petitioners bear the burden of articulating how they satisfy eligibility criteria. *See* section 291 of the Act, 8 U.S.C. § 1361. The Petitioner does not establish on motion how the record provided sufficient, probative information about the potential international trade that would support a conclusion that it rises to the level of substantial positive economic effects or other broader implications. Therefore, the Petitioner has not demonstrated that we misapplied the preponderance of evidence standard or *Dhanasar* in that respect. *See* 8 C.F.R. § 103.5(a)(3).

In summation, the Petitioner has not established 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. *See* 8 C.F.R. § 103.5(a)(3). Specifically, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, and therefore he is not eligible for a national interest waiver. We again reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which

is unnecessary to the results they reach"); *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).

III. CONCLUSION

The motion to reconsider does not show that our previous decision was based on an incorrect application of law or policy. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The motion to reconsider is dismissed.