U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19405546

Date: AUG. 31, 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 [redacted] researcher, 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 initially approved the petition. However, the Director subsequently revoked the approval, concluding that a waiver of the required job offer, and thus of the labor certification, would not be in the national interest. We dismissed the subsequent appeal, concluding that though the record shows that the proposed endeavor would have substantial merit and national importance, the Petitioner did not establish he is well-positioned to advance the endeavor.[1] We reserved our opinion on whether the record establishes that, on balance, it would be beneficial for the United States to waive the requirements of a job offer and thus of a labor certification.

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 combined motions.

I. LEGAL FRAMEWORK

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). 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). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may grant a national interest waiver as matter of discretion. *See also Poursina v. USCIS*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature). As a matter of discretion, the national interest waiver may be granted if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen 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

[1] For the sake of brevity, we incorporate our previous decision in this matter, ID# 8585527 (AAO May 10, 2021).

and thus of a labor certification. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the applicant has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, an applicant must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

As a preliminary matter, we note that by regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). The issue before us is whether the Petitioner has submitted new facts to warrant reopening or has established that our decision to dismiss the prior combined motion was based on an incorrect application of law or policy. We therefore incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion.

At the time the petition was filed, the Petitioner was working as a postdoctoral research associate in the Department of Electrical and Computer Engineering at [redacted] University. The record reflects that he joined [redacted] in January 2018 as a Foundry [redacted] Research and Development Engineer, and that he began serving as a Senior Device Engineer at [redacted] in July 2019.[2] In support of his eligibility for a national interest waiver, the Petitioner provided his curriculum vitae, academic credentials, published articles, conference presentations, and peer review activity, as well as evidence of articles that cited to his published work and letters of support discussing his graduate and postdoctoral research. The Petitioner argued on appeal that his research experience, published and presented work, citation evidence, recommendation letters from others in the field, commercialization of his [redacted] research, and peer review service demonstrated that he is well positioned to advance his proposed endeavor.

In our previous decision, we concluded that the record lacked sufficient evidence to demonstrate that the Petitioner is well positioned to advance his proposed research endeavor. After carefully considering the entire record of proceeding, we determined that though the record demonstrated the Petitioner had conducted, published, and presented research relating to his graduate and postdoctoral work, he had not shown that this work renders him well positioned to advance his proposed research. Specifically, we noted that the Petitioner did not sufficiently demonstrate that his published and

[2] As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his research positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

presented work served as an impetus for progress in the electrical engineering field or that it had generated substantial positive discourse in the sensing applications industry. We further determined that the submitted evidence did not show that his work constituted a record of success or progress in advancing research relating to [redacted]

Under the second prong of the *Dhanasar* framework, a petitioner must establish that he or she is well positioned to advance the proposed endeavor. The issue before us on motion is whether the Petitioner has demonstrated that he meets the requirements set forth under this prong through new evidence and information, or that our previous determination was incorrect based on the previous record before us.

A. Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Resubmitting previously provided evidence or reasserting previously stated facts does not meet the requirements of a motion to reopen. The new facts must also be relevant to the grounds of the unfavorable decision. A motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, the Petitioner submits eight letters of recommendation from individuals in the field, citation statistics for three of his published articles, and documentation pertaining to a research program funded by the U.S. Defense Advanced Research Projects Agency (DARPA), on which the Petitioner asserts to have worked. The Petitioner asserts that the submitted letters are from "individuals holding senior positions in academia" and serve to distinguish his research from research that simply adds to the pool of knowledge in the field. He further contends that the provided citation lists demonstrate that the majority of citations to his three most cited articles at the time of filing were citations from independent researchers who had not previously worked with the Petitioner, thus demonstrating a level of interest in his work from relevant parties sufficient to meet *Dhanasar's* second prong.

In our prior decision, we determined that although the Petitioner submitted examples of articles which cited to the Petitioner's work, the articles did not distinguish or highlight the Petitioner's work from the various other papers referenced in each article. On motion, the Petitioner offers explanations by way of letters to demonstrate that his articles, as well as his research and technologies, "served as an impetus in the field" and demonstrate that he has been well positioned to advance his endeavor. The Petitioner considers the submitted letters to be "supplementary" with regard to the evidence previously submitted, and acknowledges that "with minor exceptions, none of the explanatory comments in those letters constitutes new material." The Petitioner urges us to consider the contents of these letters as new evidence that was previously unavailable because he was unaware that "the authors had failed to distinguish his papers from multiple others that received no comment at all."

The letters the Petitioner now submits on motion cannot be considered new, as they involve matters already considered and adjudicated, and the Petitioner acknowledges that the content of the submitted letters does not constitute new material. Moreover, even if we were to consider the supplementary comments in the letters as new facts, it appears that they were directly solicited by the Petitioner to overcome the evidentiary deficiencies noted in our most recent decision regarding the extent to which the Petitioner's work was distinguished from others in the field. The articles and letters previously

submitted reflect each author's authentic observations with regard to the impact of the Petitioner's work on their own research and observations at the time they were written, and attempting to supplement the record with solicited comments that augment the previous statements and findings of the authors raises questions regarding the credibility of such opinions. Evidence that the Petitioner creates after USCIS points out the deficiencies and inconsistencies in the petition will not be considered independent and objective evidence.

The Petitioner also submits a self-compiled citation index for his three highest cited articles, but he did not offer supporting evidence to corroborate his assertions.[3] This self-compiled information lacks probative value and does not demonstrate citations to his work by others in the field. Regardless, the Petitioner has not demonstrated that the number of citations received by his published articles and conference papers reflect a level of interest in his work from relevant parties sufficient to meet *Dhanasar's* second prong. While citations to the Petitioner's articles corroborate that he has disseminated his findings, they are not sufficient to demonstrate that his work has been influential among engineering researchers, has served as an impetus for progress or generated positive discourse in the field, or otherwise represents a record of success or progress rendering him well positioned to advance his proposed research. We note that while in our *Dhanasar* precedent decision we listed Dr. Dhanasar's "publications and other published materials that cite his work" among the documents he presented, our determination that he was well positioned under the second prong was not based on his citation record. Rather, in our precedent decision we found "[t]he petitioner's education, experience, and expertise in his field, the significance of his role in research projects, as well as the sustained interest of and funding from government entities such as NASA and AFRL, position him well to continue to advance his proposed endeavor of hypersonic technology research." *Id.* at 893. Here, the Petitioner has not shown the significance of his published works or that they garnered a level of interest sufficient to demonstrate that he is well positioned to advance his endeavor. Moreover, the record does not include comparative statistics indicating how often other engineering researchers are cited.

The Petitioner also submits copies of the grant documentation for a research program funded by the DARPA, a project upon which the Petitioner claims to have worked. In our prior decision, we noted that the record did not show that the Petitioner was mainly responsible for obtaining DARPA funding for the research project, which he claims to have worked on with [redacted] The documentation submitted on motion, however, does not demonstrate that the Petitioner "initiated" or was "the primary award contact on several funded grant proposals" and that he was "the only listed researcher on many of the grants." *Dhanasar,* 26 I&N Dec. at 893, n.11. The submitted documentation does not list the Petitioner as a researcher nor does it demonstrate that the Petitioner was mainly responsible for obtaining DARPA funding for their research project.

Thus, as explained above, even if we considered the evidence submitted on motion as new evidence, it would still not establish the Petitioner's eligibility under the second prong of *Dhanasar*. Accordingly, the Petitioner has not shown proper cause for reopening the proceedings.

[3] For example, he did not present copies of the articles that cited to his work or other supporting evidence in the form of citation results from databases or search engines (such as Scopus, Web of Science, or Google Scholar).

B. Motion to Reconsider

For purposes of a motion to reconsider, the question is whether our decision was correct based on the record that existed at the time of adjudication. Here, arguments the Petitioner offers on motion do not establish that our previous findings were based on an incorrect application of the law or policy, nor does the motion demonstrate that our latest decision was erroneous based on the evidence before us at the time of the decision.

On motion, the Petitioner provides "a point by point discussion of the core evidence" on which we based our decision, and purports to provide "a summary of the evidence that [we] either overlooked or misconstrued." The Petitioner relies on the supplemental letters discussed above, and asserts that they are properly considered in his motion to reconsider because they "provide explanations of the existing parts of the record." The Petitioner, however, does not specifically assert on motion that our prior decision was based on an incorrect application of law or policy.

Our previous decision acknowledged that while the record included evidence of his research experience, published and presented work, citation evidence, recommendation letters from others in the field, commercialization of his research, and peer review service, the evidence was insufficient to demonstrate that he was well positioned to advance his proposed research. We explained, among other things, that while it appears that the Petitioner's prior research has proved beneficial to other researchers in the field, he had not sufficiently demonstrated that his published and presented work has served as an impetus for progress in the electrical engineering field or that it has generated substantial positive discourse in the sensing applications industry. We further determined that the evidence did not show that his work constitutes a record of success or progress in advancing research relating to

On motion, the Petitioner individually discusses recommendation letters submitted in support of the petition, and focuses on areas where he perceives we discounted or erroneously evaluated the statements of the writers.[4] For example, regarding evidence of his success, the Petitioner points to the letter from Assistant Professor of Mechanical Engineering at University, who discussed the Petitioner's work involving for robotic applications. The Petitioner asserts that determination that the Petitioner's "scheme eliminates the previous challenges and provides a more comprehensive understanding of' is indicative of a record of success in the field, and argues that our finding to the contrary was misplaced. The Petitioner highlights areas of the letter, noting statement that the Petitioner "was the first scientist to apply the method to identify the properties of the" While we acknowledge the claims set forth in letter, we noted in our prior decision that he did not provide specific examples indicating that the Petitioner's methodology has been implemented in the robotics industry or otherwise constitutes a record of success in the field. Although we acknowledge the Petitioner's assertion that *Dhanasar* does not mandate that the Petitioner's methodology be implemented in the industry, the Petitioner likewise did not offer specific examples of how his identification scheme has generated positive interest among relevant parties.

[4] Although we discuss representative letters here, we have again reviewed and considered each one.

The Petitioner also asks that we reconsider the letter he previously submitted from [redacted] Founder and Chief Technology Officer of [redacted] (a defunct company that ceased operations in 2017), as evidence that the Petitioner's methodology has in fact been implemented in the industry. Specifically, [redacted] indicated that he "utilized [the Petitioner's] research at [his] company [redacted] which [he] founded in 2011." While [redacted] assertions are again acknowledged, the statements in his letter do not show that the Petitioner's airborne particle detection technique have been utilized beyond [redacted] company or have otherwise attracted a level of interest in the field that renders him well-positioned.

The Petitioner also asserts that other researchers have directly utilized the Petitioner's techniques in their work, and focuses on the previously submitted letters from [redacted] professor at [redacted] University, and [redacted] head of [redacted] at the [redacted] University of [redacted]. The Petitioner asserts on motion that, contrary to our previous determination, [redacted] and [redacted] offered examples of how the Petitioner's findings had been implemented in the [redacted] field, and specifically asserts that [redacted] use of the Petitioner's [redacted] technology in his own research, which he confirms in his supplemental letter on motion, contradicts our determination that the Petitioner's [redacted] technique was not utilized beyond [redacted] The Petitioner further argues that [redacted] original letter indicates that he implemented the Petitioner's technology to develop an [redacted] to identify [redacted]

Again, while we acknowledge that the writers relied on the Petitioner's technology in their personal work, neither offered examples of how the Petitioner's findings have been implemented, utilized, or applauded in the [redacted] field. Moreover, neither offer specific examples of how the Petitioner's technology has generated positive interest among relevant parties, has been implemented in the pharmaceutical or electrical engineering industries, or otherwise reflects a record of success in his area of research.

The Petitioner also requests reconsideration of the fact that his work has attracted interest from entities such as the National Science Foundation (NSF) and [redacted]. Regarding [redacted] the Petitioner initially submitted a July 2013 email from [redacted] a product planning manager, as documentation of interest in his work. The email requested a copy of a paper authored by the Petitioner, [redacted], and three others entitled "[redacted]," and two subsequent emails directed to [redacted] requested that he "continue the conversations on this issue" and "keep in touch." The Petitioner asserts that we overlooked the fact that [redacted] interest was in a technology invented by the Petitioner. Further, the Petitioner asserts that NSF's award of a $750,000 grant to [redacted] further demonstrates interest in the Petitioner's technologies. The record as constituted, however, demonstrates that [redacted] was the primary contact with [redacted] and his company was the NSF grant recipient, and therefore is not demonstrative of interest from relevant parties in the Petitioner's work, as opposed to the work of [redacted]

The Petitioner also asserts that his work has been sufficiently distinguished from others in the field, has been widely disseminated in the field, and that his peer review activities confirm that he is well positioned to advance his proposed endeavor. He relies on the numerous recommendation letters contained in the record, as well as new letters with supplemental comments, in support of this

assertion. The writers of the recommendation letters, however, for the reasons discussed in our prior decision, did not provide adequate context of the significance of the Petitioner's solutions or techniques to show that through his work he has affected the electrical engineering industry, served as an impetus for progress or generated positive discourse in his field, or that his work otherwise represents a record of success or progress rendering him well positioned to advance his proposed endeavor. Moreover, the Petitioner has not demonstrated that his occasional participation in the widespread peer review process represents a record of success in his field or that it is otherwise an indication that he is well positioned to advance his research endeavor. Finally, the Petitioner did not provide specific examples of how his research record otherwise renders him well positioned to advance his proposed endeavor.

It is the Petitioner's burden to prove by a preponderance of evidence that he is qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* On motion, the Petitioner indicates that he disagrees with our previous assessment of the evidence submitted in support of the petition. However, the Petitioner has not provided probative evidence establishing that our prior decision was based on an incorrect application of law or policy, nor has he otherwise shown proper cause to reconsider the previous decision. Accordingly, we will dismiss the motion to reconsider.

III. CONCLUSION

For the reasons discussed, the evidence provided in support of the motion to reopen does not overcome the grounds underlying our prior decision, and the Petitioner's motion to reconsider has not shown that our prior decision was based on an incorrect application of law or policy. Therefore, the combined motion to reopen and reconsider will be dismissed for the above stated reasons.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.