U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20203388

Date: FEB. 22, 2022

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 advanced degree professional, 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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not established that he met the second and third prongs under the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] As a result, the Director determined that the Petitioner had not demonstrated 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 subsequent appeal. The matter is again before us on a motion to reopen. On motion, the Petitioner submits a brief and additional evidence.

Dhanasar states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as 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. *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).

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 motion to reopen.

I. ANALYSIS

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility

[1] 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*).

for the requested immigration benefit. In addition, the review of any motion is narrowly limited to the basis for the prior adverse decision. 8 C.F.R. § 103.5(a)(1)(i). Accordingly, we examine any new facts to the extent that they pertain to our prior dismissal of the Petitioner's appeal.

In our prior decision, we agreed with the Director that the Petitioner qualifies as a member of the professions holding an advanced degree and that he had established the substantial merit and national importance of his proposed endeavor. We then discussed the deficiencies in the evidence submitted to establish that he is well positioned to advance the proposed endeavor.

On motion, the Petitioner generally alleges that we incorrectly cited to *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) in order to disregard the Petitioner's "on-going success and impact" and submits a copy of an AAO non-precent decision. First, we relied on *Soriano* for the proposition that we would not consider the referenced evidence submitted for the first time on appeal. Second, the Petitioner fails to address or even acknowledge our conclusions regarding the evidence in question. As we explained in our decision, regarding the articles for which he submitted the reference pages for the first time on appeal, they "do not distinguish or highlight the Petitioner's work from the hundreds of other papers referenced in the articles." As for the *ScienceDaily* articles, they "do not mention or credit the Petitioner's research, showing that it has somehow impacted the chemical industry or otherwise constitutes a record of success in the field." Finally, his Google Scholar citation list "does not specify how many, if any, of the citations for each of these individual articles were self-citations by him or his co-authors," but regardless, "the Petitioner has not shown that the number of citations received by his articles or the level of interest they generated is sufficient to demonstrate that he is well positioned to advance his endeavor." In other words, contrary to the Petitioner's assertions, while we may have referenced *Soriano*, we still considered the evidence and determined it insufficient. We would also note that if the Petitioner believes that our prior decision was based on an incorrect application of law or policy, he should have filed a motion to reconsider.

The Petitioner also claims that the Director is required to compare the impact of his work with that of Dr. Dhanasar and cites to the concept of precedent decisions in support. While we agree that *Dhanasar* is a precedent decision and further acknowledge the concept of precedent decisions and their controlling nature, the Petitioner has cited no legal authority for a one-to-one comparison of two petitioners operating in different fields with different proposed endeavors. *Dhanasar* establishes an analytical framework to examine national interest waiver cases, but it does not mandate, or even suggest, that a side-by-side comparison of individual petitioners and endeavors is required. Moreover, and as explained above, a motion to reconsider, and not a motion to reopen, addresses the incorrect application of law or policy.

In addition, the Petitioner submits a copy of an offer letter to be a "Data Reviewer" and information about the employing company. Notably, the letter does not include any job duties or additional information about the position. Without more, the Petitioner has not established how the proffered position 1) relates to his proposed endeavor or 2) sufficiently demonstrates that he is well positioned to advance his proposed endeavor such that we may conclude that he meets this criterion.

III. CONCLUSION

The Petitioner has not provided any new evidence on motion to overcome our prior conclusions and establish that he qualifies for a national interest waiver. Therefore, he has not met the requirements for a motion to reopen.

ORDER: The motion to reopen is dismissed.