U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29319616

Date: NOV. 16, 2023

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner seeks second preference immigrant classification, 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 petition, concluding 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 a subsequent appeal. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

I. LAW

A motion to reconsider must establish that our prior 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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

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). *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,[1] 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.

[1] *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).

II. ANALYSIS

On motion, the Petitioner contends we did not adequately review the record before us on appeal, but he does not sufficiently identify or discuss the aspects of the submitted evidence that he believes we overlooked. Contrary to the Petitioner's assertion, we reviewed and considered the entire record of proceeding *de novo* prior to making our determinations on appeal.

On appeal, we ultimately concluded that since the record did not establish the national importance of the Petitioner's specific proposed endeavor, as required under *Dhanasar's* first prong, he had not demonstrated eligibility for a national interest waiver as a matter of discretion. We also reserved his appellate arguments regarding his eligibility under *Dhanasar's* second and third prongs, as considering them would have served no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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). For the sake of brevity, we incorporate our previous analysis of the record and will repeat only certain facts and evidence as necessary to address the Petitioner's assertions on motion to reconsider. Our previous decision in this matter was ID# 27461772 (AAO JUN. 13, 2023).

As a preliminary matter, the Petitioner alleges in the motion brief that his documents "were not properly analyzed by the Service, violating the Fourth Amendment of the Constitution of the United States of America." The Fourth Amendment in part prohibits "unreasonable searches and seizures." U.S. Const. amend. IV. We conclude the Petitioner's citation to the Fourth Amendment is not relevant to the matter at hand as he has not explained *how* we violated his Fourth Amendment rights in dismissing his appeal. Citing to an authority that is not relevant to the grounds of the unfavorable decision will not meet the requirements of a motion to reconsider. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("A motion to reconsider is not a mechanism by which a party may file a new brief before the Board raising additional legal arguments that are unrelated to those issues raised before the Immigration Judge and on appeal.").

On motion, the Petitioner also contests the correctness of our prior decision, asserting we did not consider the evidence of record under the preponderance of evidence standard. Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe*, 25 I&N Dec. at 369*; see also Matter of Martinez, 21 I&N Dec. 1035, 1036 (BIA 1997); Matter of Soo Hoo, 11 I&N Dec. 151, 152 (BIA 1965)*. Accordingly, the "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See* 1 *USCIS Policy Manual*, E.4(B), https://www.uscis.gov/policy-manual. While the Petitioner asserts on motion that he has provided evidence sufficient to demonstrate his eligibility for a national interest waiver, he does not further explain or identify any specific instance in which we applied a standard of proof other than the preponderance of evidence in dismissing the appeal.

The Petitioner further contends on motion that we did not "substantiate" the basis for our conclusion that his business plan did not demonstrate that his endeavor would have "substantial positive econom[ic] effects," and alleges that we only "superficially" analyzed the prospective impact of the jobs that were forecast to be created in the business plan. We disagree.

In dismissing the appeal, we observed that the Petitioner's business plan did not reflect that his company's future business activities and staffing levels stand to provide substantial economic benefits to specific regions or to the United States. We noted that the plan respectively forecasts five-year tax generation of $6 million, revenue of $17.7 million, and payroll expenses of $14 million. It also contemplates state, regional, and national business expansion for his company, but the business plan did not establish the benefits to the regional or national economy resulting from the company's profits and revenues would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Similarly, we acknowledged that although the Petitioner claims the business would create "about one hundred and eighty-five (185) jobs for U.S. workers across the United States," but he did not demonstrate that such future staffing levels would provide substantial economic benefits to Florida or the region or U.S. economy more broadly at a level commensurate with national importance.

We also explained that the submitted evidence did not demonstrate that such hiring figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally. *Id.* On motion, the Petitioner does not adequately address the conclusions we expressed in our previous decision that the record lacked probative evidence sufficient to demonstrate that his proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects. Importantly, he does not identify how our conclusions were based on an incorrect application of law or policy - other than the vague and generalized assertions discussed above.

Regarding the motion to reconsider, we stress again that to establish merit for reconsideration of our latest decision, a petitioner must both state the reasons why the petitioner believes the most recent decision was based on an incorrect application of law or policy; and it must also specifically cite laws, regulations, precedent decisions, and/or binding policies they believe we misapplied in our prior decision. As in this case, a petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; the motion must demonstrate how we erred as a matter of law or policy. *See Matter of O-S-G-*, 24 I&N Dec. at 56 (finding that a motion to reconsider is not a process by which the party may [seek] reconsideration by generally alleging error in the prior decision).

Although we acknowledge the Petitioner's submission of a brief, we determine the Petitioner does not sufficiently address the conclusions we reached in our immediate prior decision or provide reasons for reconsideration of those conclusions. Moreover, the brief lacks any cogent argument as to how we misapplied the law or USCIS policy in dismissing the prior motion to reconsider.

In light of the above, we conclude that this motion does not meet all the requirements of a motion to reconsider and must therefore be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.