U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30908239

Date: APR. 24, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a safety engineer, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for the national interest waiver. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider.

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.

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 motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, the Petitioner asserts no new facts and submits no new evidence. Therefore, the Petitioner's filing does not meet the requirements of a motion to reopen and must be dismissed.

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.

On motion, the Petitioner asserts that our prior decision "is contrary to law or policy," but the Petitioner does not identify any specific law or policy on motion, except to contend that our purported failure to fully consider the evidence "violat[ed] the Fourth Amendment of the Constitution of the United States of America." The Fourth Amendment prohibits "unreasonable searches and seizures." U.S. Const. amend. IV. The Petitioner does not explain how the dismissal of his appeal violated that prohibition.

The Petitioner may have meant to refer to the Fifth Amendment, which guarantees "due process of law." U.S. Const. amend. V. But the Petitioner does not identify any specific documents or other pieces of evidence that we overlooked in our appellate review of the record, and the Petitioner does not explain how discussion or consideration of those materials would have changed the outcome of our July 2023 decision. The general assertion that we did not sufficiently consider unspecified evidence is not sufficient to warrant reconsideration of our prior decision.

The Petitioner's motion is more specific when referring to our conclusions regarding changes to the Petitioner's proposed endeavor. A detailed description of one's proposed endeavor is a key requirement in the national interest framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884. In our appellate decision, we referred to the Petitioner's arguments and quoted from a business plan in the record. We observed that the Petitioner appeared to have materially changed his proposed endeavor in response to a request for evidence (RFE), and again on appeal. We stated:

> The record appears to currently contain three proposed endeavors in various stages of development. The evidence of record initially depicted the Petitioner's endeavor as providing his health and safety expertise to a single employer. The RFE response pivoted the endeavor to one involving an entrepreneurial venture to operate a consultancy. Presently, the appeal brief presents in vague and general terms the Petitioner's endeavor to provide business growth and marketing strategies to unknown entities. We conclude that both the RFE response and the appeal brief presented a new set of facts regarding the proposed endeavor, which is material to eligibility for a national interest waiver. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971), which requires that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. . . . The Petitioner must meet eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). The Petitioner's plans to establish a company were presented after the filing date; as such, the amended endeavor cannot retroactively establish eligibility. Further, the appeal brief provides a confusing overview of the Petitioner's intended work role and, as such, yet another deviation from the Petitioner's initial proposed endeavor. . . . A petitioner may not make material changes to a petition that has already been filed to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). The Petitioner has not provided a definitive and consistent description of the Petitioner's proposed endeavor that would allow for a meaningful analysis of whether that endeavor is one of substantial merit and/or national importance. For these reasons, the petition may not be approved.

On motion, the Petitioner states:

> [T]he assertion in the appeal dismissal that the Petitioner presented three distinct proposed endeavors in his application is not accurate. A meticulous examination of the provided documents would undeniably confirm that all arguments raised by the Petitioner are complementary, rather than contradictory.
>
> Given the often-prolonged duration of immigration application processing, which can span years, it's typical for Petitioners to refine and complement their initial endeavors. This is reflective of their evolving circumstances and should not be misconstrued as a deviation from the original proposal.

The record does not support the Petitioner's assertion that the record depicts a single, evolving endeavor with no material changes. Initially, the Petitioner stated that he intended to "continue [his] career by working as a Safety Engineer for an American company or department," where he would "[f]ill a position as a Safety Engineer that is vacant." Only in response to the RFE did he indicate that his proposed endeavor would involve "developing a business in the United States" in which he would "leverage his business development and marketing knowledge." In his initial statement, the Petitioner claimed no such expertise in business development and marketing.

The Petitioner's appellate brief included substantial discussion of "[b]usiness development and sales professionals, such as the Appellant," and indicated that the Petitioner would "provid[e] objective advice regarding the optimization of business processes using respected industry methodologies, as well as implementing effective business development, sales, and marketing techniques." This discussion is not a minor refinement of the Petitioner's initially stated plan to fill a company's vacant position as a safety engineer. Rather, it refers to a different occupation altogether. On motion, the Petitioner maintains that the different descriptions of the proposed endeavor "are complementary, rather than contradictory," but the Petitioner does not elaborate or explain how the different statements quoted above, and in our appellate decision, could reasonably be seen as mutually compatible and relating to the same proposed endeavor.

The appellate brief also includes some discussion of safety engineering, but this does not establish that the Petitioner has consistently described the same proposed endeavor throughout the proceeding. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. *See, generally,* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual. In this case, the Petitioner has discussed materially different endeavors within the broader occupational category of safety engineering. Working as an engineer for a single employer is not the same endeavor as starting and running a consulting business; the two endeavors overlap but involve different tasks and responsibilities.

On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.