U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29480525

Date: JAN. 08, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a financial manager, seeks second preference immigrant classification, as well as a national interest waiver of the job offer requirement attached to this EB-2 immigrant 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 that the record did not establish 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, concluding that the record did not satisfy the first *Dhanasar* prong, and reserved our opinion on the second and third *Dhanasar* prongs. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). The matter is now before us on combined motions to reopen and reconsider.[1]

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). 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.

Our previous decision, incorporated herein by reference, identified and evaluated the Petitioner's specific proposed endeavor of continuing his career as a financial manager and consultant and determined that the evidence on record does not sufficiently show that the proposed endeavor activities would create national or global implications in the field, extending beyond the businesses that would employ his services. We also determined that the record does not support the Petitioner's claims of substantial economic effects to the U.S. regional or national economy through job creation or tax

[1] We note that an attorney attempted to file a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, in this case. However, as the form was improperly filed, we consider the Petitioner self-represented. 8 C.F.R. § 292.4(a)

revenues directly attributable to his future endeavor. On this combined motion, the Petitioner disagrees with our previous conclusion that the record did not show the national importance of his proposed endeavor. However, we find that the submission of new evidence does not establish the Petitioner's eligibility for a national interest waiver and the Petitioner has not demonstrated that we misapplied law or USCIS policy, and that our prior decision was incorrect based on the evidence in the record at the decision, as discussed below.

On motion to reopen, the Petitioner claims that the Biden administration's initiative on small business industry elevates his endeavor to the level of national importance and submits a one-page article from the Small Business Administration (SBA) dated January 30, 2019, entitled "Small Businesses Generate 44 Percent of U.S. Economic Activity." The article states that "[s]mall businesses are the lifeblood of the U.S. economy" and references a full report, "Small Business GDP, 1998-2014," and a summary of the research regarding contribution and value of small businesses to the U.S. economy since 2018.

Although we recognize that small businesses contribute to the growth of economy in general, merely working in an important field is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Here, the SBA article does not discuss any details relating to the Petitioner's specific endeavor and its impact other than that his endeavor is in the field of assisting small businesses. Aside from this article, the Petitioner has not introduced any other new evidence, or a new fact supported by documentary evidence to establish national importance of his endeavor.[2] Therefore, we will dismiss the motion to reopen.

The Petitioner also claims that the Director "did not give full consideration to the evidence provided by the Petitioner along with the first filing and the RFE response, as it should have been given" and as such, it violated "the Fourth Amendment of the Constitution of the United States of America as Petitioner provided timely and proper notice to his RFE response to the USCIS." However, we cannot address arguments on the constitutionality of laws enacted by Congress or on regulations. *See, e.g., Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992) (holding that the Immigration Judge and Board of Immigration Appeals lacked jurisdiction to rule upon the constitutionality of the Act and its implementing regulations); *Matter of Hernandez-Puente*, 20 I&N Dec. 335, 339 (BIA 1991) ("It is well settled that it is not within the province of this Board to pass on the validity of the statutes and regulations we administer.") (citations omitted).

Furthermore, our review on motion is limited to reviewing our latest decision and the filing before us is not a motion to reconsider the denial of the petition. 8 C.F.R. § 103.5(a)(1)(ii). In other words, we examine any new arguments to the extent that they pertain to our prior dismissal of the Petitioner's motion. Therefore, we cannot consider new objections to the earlier denial, and the Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding.

[2] The Petitioner further submitted a reference letter from [redacted] a chief financial officer of [redacted], but as the Petitioner stated, this reference letter "illustrates progress towards achieving the proposed endeavor" and supports the second prong of *Dhanasar*, whether the Petitioner is well-positioned to advance the proposed endeavor, not whether the endeavor is of national importance under the first prong of *Dhanasar*.

We also note that the Director considered the evidence submitted with the RFE response, such as the Petitioner's "Definitive Statement" and his business plan, which were not part of the initial filing. The Director's denial letter analyzed the facts in the Petitioner's "Definitive Statement" and the business plan before concluding that the evidence does not establish that his endeavor "has implications beyond the proposed business and its business partners, alliances, and/or clients or customers to impact the industry or field more broadly." Therefore, the Petitioner had the notice and opportunity to address insufficiencies in the record and the Director properly considered the evidence in totality, including the documents submitted with the RFE response.

Additionally, the Petitioner contests the correctness of our prior decision by asserting that we did not "given an opinion on the second and third prongs of the National Interest Waiver." With this claim, the Petitioner has not offered any new fact or evidence, so we will consider this claim as a motion to reconsider.

As we previously concluded that the Petitioner did not satisfy the first prong of the *Dhanasar*, he is not eligible for a national interest waiver as a matter of discretion and the remaining arguments concerning the eligibilities under second and third prongs of *Dhanasar* need not be discussed. *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). On motion, the Petitioner does not rely on any precedent law, regulations, or policy to support his claim that we must provide analysis on all three prongs of *Dhanasar* on appeal. Moreover, the Petitioner was given the opportunity to provide additional documentation and arguments regarding these remaining prongs when the Director issued the RFE. Therefore, we will dismiss the motion to reconsider.

Finally, the Petitioner asks to "consider the matter of the Petitioner's eligibility for classification as an Advanced Degree Professional" and resubmits the work experience letter from his previously employer, [redacted] However, aside from this request to reconsider our prior decision on this issue, the Petitioner does not make any substantive arguments as to how the Petitioner qualifies as an advanced degree professional or how our prior decision erred as a matter of law or policy. Therefore, we will also dismiss this claim as it does not meet the requirements of a motion to reconsider.

Based on the foregoing, we conclude that the Petitioner's submission of additional evidence in support of the motion to reopen does not establish eligibility. 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 combined motion will be dismissed. 8 C.F.R. § 103.5(a)(4). We affirm our prior conclusion that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.