U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29787271

Date: JAN. 26, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, 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 that 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 the Petitioner's appeal. The matter is now before us on motion to 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 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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

In our decision dismissing the appeal, we agreed with the Director that the Petitioner did not meet the first prong of the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). We explained that the Petitioner had not demonstrated the national importance of his proposed endeavor.

On motion, the Petitioner asserts that we "erred in not considering information about [the Petitioner's] current and prospective position to illustrate the capacity in which he intends to work." Our appellate decision, however, specifically considered the Petitioner's initial statement in the cover letter accompanying the petition, and the information in his "Personal Statement" and business plan for [redacted] offered in response to the Director's request for evidence (RFE). We determined the

Petitioner had not shown that his proposed endeavor to offer graphic design services through [redacted] stands to sufficiently extend beyond his prospective clients to impact his industry or the U.S. economy more broadly at a level commensurate with national importance.

In addition, the Petitioner contends that we "applied a stricter standard of proof than permissible when evaluating the evidence of record." Except where a different standard is specified by law, a petitioner must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Under the preponderance of the evidence standard, the evidence must demonstrate that a petitioner's claim is "probably true." *Id.* at 376. Here, the Petitioner expresses disagreement with our analysis of his business plan and the "Expert Opinion Letter" from Dr. V-L-, but he does not explain how our specific conclusions applied a stricter standard of proof.

For example, regarding the Petitioner's business plan for [redacted], we have reviewed it and note that the job creation and revenue projections included therein are not supported by details showing their basis or an explanation of how those projections will be realized. Even if the Petitioner had established a sufficient basis for these projections, they would not establish the national importance of the proposed endeavor. While the sales forecast and projected income statement indicate that the Petitioner's company has growth potential, it does not demonstrate that it has significant potential to employ U.S. workers or would result substantial positive economic benefits to the regional or national economy.

With respect to the "Expert Opinion Letter" from Dr. V-L-, we explained that his discussion relating to the importance of graphic designers, the graphic design industry, the remodeling and interior design industries, small businesses, and immigration was insufficient to demonstrate the national importance of the Petitioner's specific proposed endeavor of operating [redacted]. Furthermore, we noted that Dr. V-L-'s letter did not explain how the Petitioner's graphic design services, through his business located in an undisclosed area in Florida, would have broader implications for our country. While the advisory opinion cites to industry-wide economic data, it does not demonstrate how the Petitioner's specific endeavor rises to a level of national importance. The letter from Dr. V-L- does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work offers broader implications in his field, enhancements to societal welfare, or substantial positive economic effects for our nation that rise to the level of national importance.

The Petitioner also asserts that we overlooked or did not properly consider "Probative Research" in support of his proposed endeavor. Our appellate decision, however, explained that the submitted articles discussing a wide range of topics covering graphic designer occupations, industry needs, visual learners, economic benefits, and design markets were insufficient to demonstrate the national importance of the Petitioner's proposed endeavor. We stated that "the Petitioner must demonstrate the national importance of his specific proposed endeavor of providing his particular graphic design services through [redacted] rather than the importance of graphic designers and related fields and industries."

The Petitioner points to three articles, entitled "We are 90% Visual Beings," "U.S. National Design Policy Initiative," and "How Graphic Design Can Change the World." This evidence is relevant to the substantial merit of the proposed endeavor and we agree with the Director's determination that the

Petitioner meets this element of the first *Dhanasar* prong. In determining national importance, however, the relevant question is not the importance of the industry in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner must still demonstrate the potential prospective impact of his specific proposed endeavor. Here, the Petitioner has not shown that his undertaking stands to have a substantial economic impact or offers broader implications in the field of graphic design.

The Petitioner further argues that we "erred in not considering precedent decisions," but he mentions only *Dhanasar*.[1] He states: "As in *Matter of Dhanasar*, [the Petitioner] submitted one (1) probative opinion letter from an expert holding a senior position in academia and industry describing the importance of his proposed endeavor and, more broadly, the benefits of his work for the United States. In addition, we submitted probative research to support [the Petitioner's] claims." In *Dhanasar*, "[t]he petitioner submitted probative expert letters from individuals holding senior positions in academia, government, and industry that describe the importance of hypersonic propulsion research as it relates to U.S. strategic interests." *Id*. at 892. In addition, the petitioner "provided media articles and other evidence documenting the interest of the House Committee on Armed Services in the development of hypersonic technologies and discussing the potential significance of U.S. advances in this area of research and development." *Id*. Here, the Petitioner has not established that the facts of the instant petition are analogous to those in the *Dhanasar* precedent decision. For example, unlike the scientific researcher in *Dhanasar*, the Petitioner has not demonstrated that his proposed endeavor offers broader implications in the field.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. While the Petitioner's statements reflect his intention to provide graphic interior design services to his company's clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id*. at 893. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact his industry, the field of graphic design, the U.S. economy, or U.S. societal welfare more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not shown that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not demonstrated that his company's future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the Petitioner claims that his company has growth potential, he has not presented evidence indicating that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. In addition, although the Petitioner asserts that his endeavor stands to create new jobs for U.S. workers, he has not offered sufficient evidence that his endeavor offers Florida or the United States a substantial economic benefit through employment levels, tax revenue, or business activity.

[1] Our appellate decision specifically considered the Petitioner's eligibility under the first prong of the *Dhanasar* analytical framework.

The Petitioner has not demonstrated that our appellate decision was based on an incorrect application of law or USCIS policy and that our decision was incorrect based on the evidence in the record at the time of the decision. Because the Petitioner has not established that we erred as a matter of law or USCIS policy in our decision, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and his underlying petition remains denied.

ORDER: The motion to reconsider is dismissed.