U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31680283

Date: JULY 15, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a business consultant, seeks employment-based second preference (EB-2) classification as a member of the professions holding an advanced degree, 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 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 the Petitioner's 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 motions.

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). 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 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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.[1]

In our decision, we explained the Petitioner had not shown that his proposed endeavor sufficiently extends beyond his client companies to impact the business consulting services field or the economy at a level commensurate with national importance. In addition, we stated that the Petitioner had not demonstrated that his revenue projections and potential business activity, even if realistic, would provide a significant economic benefit to the United States such that it would rise to the level of national importance.

[1] *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

On motion, the Petitioner asserts that he submitted documentary evidence to demonstrate that his proposed endeavor of being a business management specialist for his company has national implications. The Petitioner contends that we erred in not considering his current and prospective position when determining the national importance of his proposed endeavor. In a supplemental statement, the Petitioner explains that he plans to provide a range of services to businesses and private investors including consultancy on cross-border investment structures, business planning, marketing strategies, financial organization, people management, and educating U.S. business owners and maintains that his endeavor will impact the regional economy, create more job opportunities, and will have broader implications to societal welfare. The Petitioner also asserts that we dismissed his business plan that clearly outlines his proposed endeavor's benefits to the U.S. economy as well as the services the Petitioner plans to provide to small and midsize enterprises through his business. Additionally, the Petitioner claims that we did not give proper consideration to the expert opinion letters, company documents, and probative research because we concluded the documents did not sufficiently demonstrate the national importance of the proposed endeavor.

Our appellate decision, however, specifically considered the Petitioner's submission including his personal statement, business plan, expert opinion letters, and industry articles and reports. We determined the Petitioner had not sufficiently demonstrated that his specific endeavor would have national implications for the business consulting services field or industry. Our focus in considering national importance is not on the industry itself; instead, we look to "the specific endeavor that the foreign national proposed to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Id.* In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects." *Id.* at 890. As noted by the Director, and affirmed in our prior decision, the record does not show that his specific proposed endeavor's impact stands to sufficiently extend beyond his own company and its clientele to impact his field or industry, the U.S. economy, or societal welfare at a level commensurate with national importance.

The Petitioner also maintains that we used a "stricter standard than required to demonstrate the national importance of his proposed endeavor." 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 states that his record demonstrates his proposed endeavor's national importance and requests that we "evaluate whether the record includes sufficient detail regarding" his endeavor, but the Petitioner does not explain how our specific conclusions applied a stricter standard of proof.

Furthermore, the Petitioner argues that we "erred in not considering Precedent Opinion" and cites to *Matter of E-L-H-*, 23 I&N Dec. 814 (BIA 2005) which establishes that Board precedent decisions apply to all proceedings involving the same issue unless and until it is overruled or modified. However, the Petitioner mentions only *Dhanasar*.[2] He states: "As in *Matter of Dhanasar*, [the Petitioner] submitted opinions from three (3) independent experts holding senior positions in academia and industry and a professional business plan that describe 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 our 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 his field.

Moreover, regarding the three expert opinion letters, we noted in our decision that the letters restated claims the Petitioner already made concerning the national importance of the proposed endeavor and which we analyzed in the decision. We concluded that the authors did not provide additional analysis or corroborating details to support the restated claims. We also analyzed the Petitioner's "probative research" such as articles and reports, as well as the statistics about foreign direct investment, trade, and small businesses that relates to how these industries and the professions within them are important and correctly explained in our decision that in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See id.* at 889. Here, the Petitioner has not demonstrated that our analysis was in error. To determine whether a petitioner has met his burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

The Petitioner has not established that our 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. The motion to reconsider must therefore be dismissed.

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

The Petitioner has not established facts relevant to our appellate decision that would warrant reopening of the proceedings, nor has he shown that we erred as a matter of law or USCIS policy.[3] Consequently, we have no basis for reopening or reconsidering our prior decision. Accordingly, the motions 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 reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[3] We note the Petitioner states that we did not consider all his arguments under the three prongs. However, because the Petitioner did not established eligibility under the first prong of the *Dhanasar* test, we did not need to address his eligibility under the remaining prongs, and therefore, we reserved them. *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 alternate issues on appeal where an applicant is otherwise ineligible).