U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31885775

Date: JUL. 16 , 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a business process engineer, seeks classification as a member of the professions holding an advanced degree or of exceptional ability. *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 employment based second preference (EB-2) immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). 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. *Id.*

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that eligibility for the underlying immigrant classification and for a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Director also dismissed the Petitioner's combined motions to reopen and reconsider. On appeal, we withdrew the Director's motions decision and remanded the matter. The Director again dismissed the Petitioner's combined motions, and we dismissed the subsequent appeal determining that the petitioner had not demonstrated that his proposed endeavor was of national importance. 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.

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. *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 record contains a proposal for a new materially changed endeavor. Submitted with the motion are a brief and an agreement to become the regional director for the [redacted]

[redacted] in California. In the initial filing and subsequent motions and appeal, the Petitioner's stated endeavor was to establish and direct the operations of [redacted] a Florida-based entity dedicated to offering various business process reengineering, improvement, problem-solving, and management services. The offer from [redacted] is for a regional director of a non-profit professional association dedicated to the field of business process management. The record does not indicate how the position of regional director would be incorporated into the initial endeavor of [redacted] and without further explanation it does not appear to be part of the of the initial endeavor.

A petitioner may not make material changes to a petition that has already been filed in an effort to make a deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1988). Accordingly, we will not consider the Petitioner's materially changed proposed endeavor of becoming the regional director of [redacted] and will only address the initial proposed endeavor of owning [redacted] Because the Petitioner has not presented new facts related to the initial proposed endeavor, we will dismiss the motion to reopen[1].

On motion to reconsider, the Petitioner asserts we erred in our analysis of the national importance of the proposed endeavor but does not cite to any specific error in our application of *Dhanasar*. In our prior decision, we addressed the relevant evidence and determined the proposed endeavor did not demonstrate any broader implications in the field at a level of national importance. *See id.* (stating that national importance is evaluated through consideration of "potential prospective impact" and "broader implications").

We acknowledged the Petitioner's contention that broad expansion in the businesses' profitability across the country would increase United States GDP, create jobs and grow sales and tax revenues. But we determined the Petitioner had not demonstrated that his specific business would attain sufficient size or scope to achieve these results on a national scale. Moreover, we explained that although he intends to employ workers from economically depressed areas by matching candidates' addresses to "census tract numbers" for "low-income communities," the record did not indicate the business would employ enough people to significantly affect the economically depressed areas. Finally, we concluded the record did not demonstrate the business would introduce advancements to the consulting or business process engineering field, determining the Petitioner did not meet the first prong of the analytical framework to adjudicate national interest waiver petitions in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). The Petitioner reasserts these contentions articulated on appeal, but does not identify any misapplication of law or policy in our previous determinations.

The Petitioner has not established new 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.

[1] Even if the record indicated how the new position would be part of the initial proposed company, the Petitioner has not provided corroboration to demonstrate the national impact of the endeavor either through national implications within the field or that it would have significant potential to employ U.S. workers or have a substantial positive economic effect. *See Dhanasar*, 26 I&N Dec. at 890.

Consequently, we have no basis for reopening or reconsideration of our 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.