U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30433339

Date: MAR. 28, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an accountant and business operations specialist, seeks employment-based second preference (EB-2) immigrant 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, in part, that the Petitioner did not establish eligibility for a national interest waiver because he did not demonstrate the national importance of his proposed endeavor. We dismissed a subsequent appeal.

The matter is now before us on combined motions to reopen and reconsider. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. 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 combined 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). 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 the aforementioned 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 Director considered the Petitioner's claims under the three prongs of *Dhanasar* and determined that he established the substantial merit of his proposed endeavor. Regarding national importance, we further explained that the Director's decision reviewed and analyzed the Petitioner's claims of eligibility, including letters of support, industry reports and articles, and a business plan. We noted and agreed with the Director's determination that the business plan,

which was submitted in response to a request for evidence (RFE), amounted to a material change to the petition because the Petitioner did not outline an intention to start his own business in documentation initially included with his petition. *See* 8 C.F.R. § 103.2(b)(1), (12); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (1971). We stated that, although the Petitioner's appeal brief made the general assertion that the Director imposed a higher standard of proof and did not properly consider the evidence of record, the Petitioner did not discuss specific evidence in the record or describe how it was disregarded by the Director. We discussed how the Petitioner generally reiterated how his professional qualifications establish the national importance of his proposed endeavor but did not address the Director's determination that his experience relates to the second *Dhanasar* prong, rather than its national importance under the first prong.

We determined that the Petitioner did not provide any new evidence or arguments on appeal to overcome the Director's determination. Accordingly, we adopted and affirmed the Director's decision as it related to *Dhanasar's* first prong. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted this issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Court of Appeals in holding the appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

We also reserved the Petitioner's appellate arguments regarding his eligibility under *Dhanasar's* second and third prongs, as considering them would have served no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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). For the sake of brevity, we incorporate our previous analysis of the record and will repeat only certain facts and evidence as necessary to address the Petitioner's assertions on motion.

On motion, the Petitioner asserts that our decision "did not give due regard" or "full consideration" to the evidence of record. Concerning the determination of material change, the Petitioner claims that, "in fact, her [sic] plans as presented in the first filing and in the RFE response just complement each other and will, undoubtedly, benefit the US." The Petitioner does not adequately explain how his newly intended endeavor, as outlined in his response to the RFE, to start his own business does not constitute material change. Further, the Petitioner does not specifically address our determination relating to *Dhanasar's* first prong or establish that it was in error. Instead, the Petitioner makes general assertions that the Director's decision and our dismissal of his appeal are "wrong." Such assertions do not establish that our appellate decision was incorrect and do not oblige us to re-adjudicate the appeal de novo.

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. In addition, the Petitioner has not offered new evidence or facts on motion to overcome the stated grounds for dismissal in our appellate decision.

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. 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.