U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35940320

Date: JAN. 16, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a paintless dent repair technician, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or as an individual of exceptional ability in the sciences, arts, or business. 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 EB-2 immigrant classification. See section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i).

The Director of the Texas Service Center denied the petition concluding that the Petitioner did not establish that he is eligible for, and merits as a matter of discretion, a national interest waiver. We dismissed the subsequent appeal agreeing with the Director that the Petitioner did not demonstrate his eligibility for the requested national interest waiver. The matter is now before us again on a 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). 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.

The Petitioner proposes to establish a paintless dent repair business in the United States for which he would be its chief executive officer and a paintless dent repair technician. As noted above, the Director denied the approval of this petition determining that although the Petitioner qualified for the underlying EB-2 classification,[1] he did not meet the three prongs of the analytical framework set forth

[1] Our appeal decision was limited to review to the Petitioner's eligibility for the national interest waiver and did not review his qualification for the underlying EB-2 classification. We note, contrary to the Director's determination, the evidence in the record does not show the Petitioner holds the foreign equivalent of a bachelor's degree followed by at least five years

in Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016), and thus did not merit a discretionary waiver in the national interest. We dismissed the appeal, limiting our review to the Petitioner's eligibility for the national interest waiver and affirming the Director's determination that the Petitioner did not show that his proposed endeavor is of national importance under *Dhansar's* first prong. We reserved our opinion on the Petitioner's eligibility under the second and third Dhanasar prongs. See INS v. Bagamasbad, 429 U.S. at 25-26. We incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion.

On motion, the Petitioner requests we reconsider our decision, generally disagreeing with our analysis of the evidence and conclusions in the decision. He does not, however, articulate how the evidence was not properly analyzed, nor has he specifically indicated how we incorrectly applied law or policy based on the evidence in the record. Instead, the Petitioner re-asserts the same contentions he made in his initial filing, the request for evidence response, and the appeal brief about how the evidence shows he meets the three Dhanasar prongs.

We have previously considered the Petitioner's assertions and evidence in the record to conclude that he has not demonstrated eligibility for a waiver of the job offer requirement, and thus the requirement of a labor certification, in the national interest. With respect to considering the national importance of his proposed endeavor, we adopted and affirmed the Director's conclusion that the endeavor's activities do not have the potential prospective impact commensurate with national importance.

For instance, the Petitioner's intent to mentor other skilled professionals in specialized teams focused on paintless dent repair and to transfer his knowledge about paintless dent repair to others does not rise to a level of national importance because they were akin to teaching activities. As discussed in our previous decision, 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. Matter of Dhanasar, 26 I&N Dec. at 893. We further noted in Dhanasar that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." Id. at 889. Likewise, the Petitioner's intent to transfer his knowledge about paintless dent repair to others, whether through teaching or mentoring, does not demonstrate a potential impact on the automotive repair industry or the field of paintless dent repair more broadly or rise to the level of national importance as contemplated by Dhanasar.

In addition, the Petitioner repeats his contentions that the automotive repair industry benefits the economy and social welfare, and his intended work is needed in the United States because of an

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of progressive experience in a profession, or that he otherwise meets the requirements for EB-2 classification as a member of the professions holding an advanced degree. In the petition, the Petitioner did not request eligibility for the EB-2 classification as an advanced degree professional, but instead requested eligibility as an individual of exceptional ability. However, the Director did not make a determination on the Petitioner's qualification as an individual of exceptional ability. We withdraw the Director's finding on the Petitioner's eligibility for EB-2 classification as a member of the professions with an advanced degree. Because the identified basis for denial was dispositive of the Petitioner's appeal and this motion, we need not reach, and therefore reserve the Petitioner's eligibility for the EB-2 classification as an individual of exceptional ability. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

expected increase in demand for paintless dent repair workers due to increased damage to vehicles caused by weather related storms and the promotion of eco-friendly repair practices. Such claims were similarly considered when we determined that the growth and importance of the automotive repair industry and the field of paintless dent repair is not sufficient to meet the national importance requirement under the Dhanasar framework. When evaluating an endeavor's national importance, instead of focusing on the importance of an industry or the need for knowledgeable and experienced workers in a growing field, we focus on the "the specific endeavor that the foreign national proposes to undertake." See id. The Petitioner's reinvocation of his appellate contentions without demonstrating our error in law or policy and that the decision was incorrect based on the evidence in the record at the time of filing does not merit reconsideration of our prior decision.

The Petitioner has not sufficiently documented the potential prospective impact, including the asserted economic and social welfare benefits to the United States and the areas he intends to serve. We previously reviewed the evidence, including the Petitioner's statements, the information contained in his professional plan, and an article describing the benefits of paintless dent repair. However, the Petitioner's statements are not corroborated with independent and objective evidence to support his claims that his business' activities stand to provide substantial economic and social welfare benefits to the United States. Statements and claims alone are not sufficient to demonstrate the national importance of his proposed endeavor. The Petitioner must support his assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376.

Essentially, aside from broad disagreement, the Petitioner's motion does not identify a specific error in application of law or policy or that the conclusion was incorrect based on the evidence in the record. Consequently, we do not find any error or incorrect application of law or policy. The Petitioner has not met the requirements of a motion to reconsider. The Petitioner may disagree with our decision and the Director's decision, but he has not established that we incorrectly applied any law or policy or that our decision was incorrect based on evidence in the record at the time of the decision, as required by 8 C.F.R. § 103.5(a)(3).

Accordingly, we conclude that the motion does not meet all the requirements of a motion to reconsider and must therefore be dismissed pursuant to 8 C.F.R. § 103.5(a)(4). We affirm our previous determination that the Petitioner has not established eligibility under the first prong of the Dhanasar analytical framework and is thus not eligible for and does not merit a national interest waiver. We will continue to reserve the issues of whether the Petitioner meets the second and third Dhanasar prongs. See INS v. Bagamasbad, 429 U.S. at 25-26.

ORDER: The motion to reconsider is dismissed.