U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35962347

Date: JAN. 30, 2025

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, as well as a national interest waiver of the job offer requirement attached to this 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 did not establish their eligibility for the requested national interest waiver. We dismissed a subsequent 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 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 (the dismissal of the appeal). 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).

In our appellate decision dismissing the Petitioner's 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 determined the Petitioner's endeavor of operating an engineering consulting services company focusing on electrical engineering, electronics, and production processes was substantially meritorious, but concluded that the record did not establish its national importance under the *Dhanasar* framework. Specifically, the Petitioner did not show that his company would result in broader implications beyond the benefits to any prospective clients at a level commensurate

with national importance contemplated in *Dhanasar*. *Id.* And, in response to the Petitioner's claims in his appeal that the Director's decision emphasized the employment projections and geographical breadth of the endeavor, we concluded that the Director properly analyzed and evaluated the Petitioner's endeavor under the *Dhanasar* framework, considering the prospective impact of his endeavor to the field rather than its geographical breadth.

And, while we acknowledged the Petitioner's assertions and evidence relating to the importance of the electrical engineering field, we explained that, when determining national importance, we considered the prospective impact of the specific endeavor, rather than the collective importance of the field or occupation. Accordingly, we concluded that the industry reports and articles emphasized the importance of the field, but did not demonstrate the national importance of the Petitioner's specific endeavor. 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).

On motion, the Petitioner submits a brief which is substantially similar to the brief submitted in support of his appeal, along with three new articles discussing the importance of the electrical engineering field and the field's growth potential in the next seven years. Considered collectively, the new articles do not demonstrate the Petitioner's eligibility for a national interest waiver, nor do they evidence new facts that are relevant to the issues raised in our dismissal of the Petitioner's appeal. As stated, the Petitioner previously provided articles addressing the importance of electrical engineering and its impact on various industries, and we explained that while this evidence could support the substantial merit of his endeavor, this evidence does not establish the prospective impact of his *specific* endeavor. On motion, the Petitioner does not explain why these articles directly establish the impact of his endeavor, rather than the collective importance of the field. Accordingly, the Petitioner has not provided any new facts establishing the national importance of the proposed endeavor, and therefore he has not provided a basis for granting a motion to reopen.

On motion to reconsider, the Petitioner asserts that our decision "improperly suppressed the weight of the robust and vast documentary evidence submitted." In support of this, the Petitioner cites USCIS policy relating to the evaluation of evidence, concluding that this shows the decision is in clear conflict with the evidence in the record and incorrectly applied laws and policies. Notably, however, the Petitioner does not identify what evidence our decision did not correctly evaluate, or how our decision was not consistent with the policy cited, nor does he specifically address the conclusions made in our decision. Instead, the Petitioner generally disagrees with our conclusions and primarily reargues facts and issues we have already considered in our previous decision.

The Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; the motion must demonstrate how we erred as a matter of law or policy. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision").

The Petitioner has not established new facts relevant to our decision that would warrant reopening of the proceedings, nor has he shown that we erred as a matter of law or policy. Consequently, we have no basis for reopening or reconsideration of our decision, and the combined motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.