U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20612240

Date: SEP. 21, 2022

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks the second preference (EB-2) immigrant classification, 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 Petitioner while the Petitioner was eligible for the EB-2 classification as a member of the professions holding an advanced degree, he had not established 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 again before us on a motion to reconsider. With the motion, the Petitioner submits a brief asserting that we erred in our decision and that he is eligible for a national interest waiver. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Upon review, we will dismiss the motion.

I. LAW

A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy; and establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider that does not satisfy these requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). The filing before us is a motion to reconsider our most recent decision. In other words, we will examine the Petitioner's assertions on motion to the extent that they pertain to our prior dismissal of the Petitioner's appeal.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of*

Dhanasar, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

We reviewed and considered the entire record of proceeding *de novo* prior to making our determinations on appeal. We concluded among other things, that the record did not establish the national importance of the Petitioner's specific proposed endeavor, as required by the first prong of the *Dhanasar* analysis. While the Director determined in the denial that the Petitioner's proposed endeavor has national importance, we withdrew the Director's determination in this regard. We agreed with the Director that the Petitioner had not established that he is well positioned to advance his endeavor, and that he had not demonstrated that a waiver of the job offer, and thus a labor certification would be in the national interest. 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 to reconsider.[4]

For the following reasons, the Petitioner has not established on motion that our determinations regarding the national importance of the Petitioner's proposed endeavor in our previous decision were 1) based on an incorrect application of law or USCIS policy, and 2) incorrect based on the evidence in the record at the time of the decision.

On motion, the Petitioner discusses his proposed endeavor's research focus ("to conduct research in traffic and transportation; perform microsimulation traffic modeling and analyze traffic operations, safety, capacity, and flow") and indicates that we erroneously evaluated its prospective national importance. He points to a letter accompanying the petition that "highlighted the detrimental effects of climate change in the United States with respect to road flooding and significant delays in the flow of goods and services to low-lying areas, such as those in Florida, as well as a 90% increase in road flooding across the East Coast in recent years."

The Petitioner contends that he has "already been tackling this problem and co-authored a technical paper on this subject. . . . to identify physical transportation infrastructure that was most likely to be exposed to continuous flooding," which was published in 2013 while he was conducting his doctoral research. He asserts this paper is "one of [his] most successful research projects to date," and points to letters provided by Dr. B- and Dr. M- in which they note that Florida is "particularly susceptible to sea level rise, given its large population and the proximity of the roads to sea level." He avers that "[t]his research is in line with the Petitioner's proposed endeavor and that *Dhanasar* permits a finding

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).
[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).
[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.
[4] Our previous decision in this matter was ID# 18142718 (AAO SEP. 15, 2021).

of national importance when a proposed endeavor demonstrates 'substantial positive economic effects' (*Dhanasar*, at 889-90) as the preponderance of the evidence suggests here." While the Petitioner references his initial description of the proposed endeavor, he does not otherwise discuss the evidence in the record that substantiates his contention that "substantial economic benefits" will be realized through the Petitioner's specific research projects, nor does he show how we erroneously evaluated the evidence of record in this regard, contrary to law and USCIS policy.

Within our previous decision we explained that the documentation submitted in support of the petition predominantly relates to the Petitioner's past research activities conducted while he obtained his advanced degrees rather than his future research plans. The Petitioner works as a project engineer for a private engineering firm called [redacted][G-]. We examined the recommendation letters from academics and engineers familiar with the Petitioner's work and observed that although the authors describe the Petitioner's past research work, they demonstrated little knowledge of his work since the Petitioner left academia and began his position with G-, nor did they offer information concerning the Petitioner's proposed endeavor. We noted that the record contained insufficient evidence of the Petitioner's research since he left academia and joined the private engineering firm, and that without more, the evidence submitted did not show that his recent research publications stand to have a broad impact on the field at a level commensurate with national importance. On motion, the Petitioner does not persuasively address this aspect of our analysis to show that we erred in our evaluation of the evidence.

For instance, the Petitioner asserts on motion that we "conflated [the Petitioner's] *employment* with his proposed *endeavor,*" indicating "[t]he national importance of [the Petitioner's] employment at G- is simply irrelevant here; what matters is the national importance of his proposed endeavor." (Emphasis in the original). We disagree. As discussed in our previous decision, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we consider evidence documenting the "potential prospective impact" of his work. As research has the potential to impact the field differently than engineering projects would, such details are important for determining the potential prospective impact of the proposed endeavor. In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Therefore, we look to information about a petitioner's current and prospective positions to illustrate the capacity in which he intends to work when determining the national importance of the proposed endeavor.

Notably, the Petitioner has not offered detailed information explaining *how* the Petitioner will prospectively pursue his research projects, beyond his employment with G-. The record does not establish the prospective capacity, if any, in which the Petitioner will be predominantly engaged in conducting research on an ongoing basis. While the Petitioner states on motion that he submitted evidence "that he made at least two conference presentations since his employment at G- began in June 2017," the record does not include adequate supporting evidence that identifies the specific research projects he intends to undertake to sufficiently demonstrate the nature and extent of his proposed research and how his endeavor will have broader implications rising to the level of having national importance. Thus, contrary to the Petitioner's assertions on motion, the substantive nature of the Petitioner's current and prospective employment is *directly relevant* to establishing eligibility under *Dhanasar*'s first prong.

On motion, the Petitioner also asserts that "[we] went well beyond the boundaries of *Dhanasar* in requiring a timeline for when [the Petitioner's] research would be incorporated into roadways and intersections, which roadways and intersections would feature his research, or whether any specific entities have incorporated his research into their transportation infrastructure." Specifically, he avers that the first *Dhanasar prong* is focused on the proposed endeavor "which in this case involves research and not the specifics of how the research will be incorporated into roadways and intersections." Here, the Petitioner appears to be taking our discussion regarding the potential practical application of the Petitioner's research findings out of context.

For example, on motion the Petitioner states that "the preponderance of the evidence shows" that his research will have "significant national implications with respect to developing strategies to combat rising sea levels." However, the evidence of record did not sufficiently address *how* the Petitioner will be prospectively involved in developing such strategies through his research endeavor. We noted in our previous decision that the letter from G- mentions the Petitioner "is responsible for," "works on," and "has been involved in" various projects, and although the position title of "project engineer" suggests that he has specific and discrete projects that he will carry forward, the record contained insufficient information concerning any such projects and whether they are (or will be) research-based. We concluded that the Petitioner did not offer a sufficiently direct connection between his research and the roadway or traffic safety improvements that might be produced as a result of his research findings - which appears in large part to form the basis of the Petitioner's assertions that his prospective endeavor will be of national importance. While we suggested that evidence such as a timeline for the practical application of the Petitioner's research findings might illustrate such a connection; to show, e.g., that his research will have "significant national implications," we did not impose any specific project timeline requirement within our case analysis to arrive at our determinations.

In determining national importance, the relevant question is not the importance of the field, 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 Dhanasar*, 26 I&N Dec. at 889. 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.* For the foregoing reasons, we affirm our prior determination that the Petitioner did not sufficiently establish the substantive nature of the prospective research projects he intends to undertake in the United States, and the connection between his prospective research endeavor and the alleged broader implications of it. *Matter of Chawathe*, 25 I&N Dec. at 376.

While the Petitioner disagrees with our previous conclusion that the record did not show the national importance of the Petitioner's proposed endeavor - as required by the first prong of the *Dhanasar* analysis - on motion to reconsider, he has not established that we misapplied law or USCIS policy, and that our previous decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3).

Based on our discussion above, we will not address the Petitioner's remaining assertions on motion regarding other grounds to dismiss the Petitioner's appeal, such as his eligibility under the second prong outlined in *Dhanasar*. There is no constructive purpose in addressing it because it cannot change the outcome of the motion. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (finding it unnecessary to

analyze additional grounds when another independent issue is dispositive of the appeal); 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).

As the Petitioner has not met the requirements for a motion to reconsider, we affirm our prior conclusion that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver.

ORDER: The motion to reconsider is dismissed.