U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23133666

Date: JAN. 05, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, an engineer and project manager in the oil and gas industry, seeks second preference immigrant classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts or business. He also seeks 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).

After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, 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. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the petition, concluding that, although the Petitioner was an advanced degree professional and established eligibility for EB-2 classification, he had not demonstrated eligibility for a national interest waiver. Specifically, the Director concluded that the Petitioner established that the proposed endeavor had substantial merit and that he is well positioned to advance the proposed endeavor. However, the Director determined that the Petitioner had not established that the proposed endeavor was of national importance, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification.

On appeal, we affirmed the Director's decision that the Petitioner had not established the proposed endeavor's national importance and we dismissed the appeal.[1] We also dismissed the Petitioner's subsequent motion to reopen, concluding that the Petitioner had not established new facts supported by documentary evidence to overcome the basis for our previous decision that the Petitioner had not

[1] Because this issue was dispositive of the Petitioner's appeal, we declined to reach, but reserved, the appellate arguments regarding the remaining issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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).

established the proposed endeavor's national importance. The matter is again before us on a second motion to reopen.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, "new facts" are facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

On motion, the Petitioner submits a brief, his personal statement and evidence already in the record. In his personal statement, the Petitioner quotes from recommendation letters also already in the record. The deficiencies in the already submitted evidence have been identified and discussed in our prior decisions.[2] The Petitioner's personal statement and resubmitted evidence do not overcome those deficiencies and does not establish that his proposed endeavor has national importance. Therefore, the Petitioner has not stated new facts supported by documentary evidence that warrant reopening our prior decision.

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). Here, that burden has not been met.

ORDER: The motion to reopen is dismissed.

[2] We also note that much of this evidence is dated between July 2019 and June 2020, which is after the petition's filing date on May 17, 2019. However, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).