U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27640584

Date: JUL. 6, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a petroleum drilling engineer, seeks second preference 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 that the Petitioner 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 subsequent appeal, determining that the Petitioner had not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the analytical framework described in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). We also concluded in our appellate decision that he had met the requirements under *Dhanasar's* second prong, but since he had not established his eligibility under the first *Dhanasar* prong, further analysis of his eligibility under *Dhanasar's* third prong would serve no meaningful purpose. *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).

The matter is now before us again on motions to reconsider and reopen our most recent decision. On motion, the Petitioner asserts that we erred in dismissing his appeal. He submits a brief and additional evidence. 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 motions.

I. MOTION TO RECONSIDER

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 proceeding at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our prior decision. 8 C.F.R. § 103.5(a)(1)(ii). Here, the prior decision is our February 2023 decision, dismissing the Petitioner's appeal. For the sake of brevity, we incorporate our previous analysis of the

record.[1] We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner relies on *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), which set forth a three-pronged test in which a petitioner seeking a national interest waiver must provide details about the individual's proposed endeavor in the United States, and demonstrate that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

On motion, the Petitioner restates many of the same claims and references the same evidence that we addressed in our prior appellate decision. Importantly, the Petitioner's brief is substantially like the brief submitted in support of his appeal. He presents the same arguments regarding his own interpretations of how evidence should be evaluated to establish the national importance of his prospective endeavor under *Dhanasar's* first prong.

For instance, the arguments presented by the Petitioner on appeal largely focused on the level of his expertise and his past accomplishments, and the economic, environmental, and national security implications of his work in the oil and gas industry. On motion, the Petitioner restates the first part of this argument contending that his "extensive training and experience in casing and cementing, and emergency preparedness training directly enhances [oil] well control and the prevention of blowouts and spills." The Petitioner asserts "this skill directly impacts this risk and threat to the security of the energy critical infrastructure and protects this vital national resource, supra, as being of national importance, and demonstrates an impact beyond his employer to issues of critical national importance." The Petitioner put forth the same or similar arguments in pages 12-15 of his appellate brief.

In our appellate decision, we agreed with the Director's conclusions that considerations of the Petitioner's education, experience and record of success are specifically reserved for the second prong of the *Dhanasar* analysis, whereas the focus in the first prong is the potential prospective benefit of the specific endeavor. We noted that while a certain level of expertise may allow an individual to engage in an endeavor with potentially wider implications, that expertise itself is not a factor in the national importance of the endeavor.

In regard to the second part of his arguments, on motion the Petitioner discusses the positive impacts of the oil and gas industry on the U.S. economy and how the oil drilling occupation "is a [n]ationally [c]ritical [i]portant [f]unction with broad implications to the U.S." The Petitioner put forth the same or similar arguments in pages 6-9 of his appellate brief. We observed in our appellate decision that *Dhanasar* states that it is the specific endeavor that is the focus of the first prong, not the individual's field or occupation. *Id.* at 884. We acknowledged that the record included substantial evidence regarding the importance of the oil and gas industry, but that it did not establish that the Petitioner's proposed endeavor to continue working for his current employer as a drilling engineer specializing in

[1] Our appellate decision in this matter was ID# 19913157 (AAO FEB. 3, 2023).

casing and cementing would have those same implications. We ultimately concluded that because the Petitioner has not established the national importance of his proposed endeavor, he does not meet the first prong of the *Dhanasar* analytical framework.

Because we have already discussed those claims and evidence, we need not address them again here. The Petitioner's remaining contentions in the motion to reconsider merely reargue facts and issues we have already considered in our previous decision. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (explaining that "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"). We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

The purpose of a motion to reconsider is to show error in the most recent prior decision. The Petitioner's motion filing does not meet this standard. We addressed the Petitioner's prior arguments in our earlier decision, and the Petitioner's repetition of the same arguments does not show proper cause for reconsideration.

On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision in February 2023. Therefore, we will dismiss the motion. 8 C.F.R. § 103.5(a)(4).

II. 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). 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

On motion, the Petitioner submission includes an updated statement from the Petitioner, and additional reports, articles, and government directives about the oil and gas industry or the oil drilling engineer occupation. The Petitioner asserts that this evidence supports new facts sufficient to establish the national importance of his proposed endeavor, which entails his continuing employment as an oil drilling engineer.

We have reviewed and considered collectively the facts put forth by the Petitioner in support of his motion to reopen but conclude that they do not meet the filing standards for such a motion. 8 C.F.R. § 103.5(a)(2). For instance, the Petitioner in his updated statement emphasizes his advanced expertise as an oil drilling engineer, and provides further detail about the duties that he performs for his employer in this occupation, noting, among other things:

> My endeavor's primary objective is to safely drill to extract our national resources from deep under the surface of the earth to provide the energy that powers the U.S., but this also includes responsibilities for managing productivity, efficiency, cost containment, and most importantly the safety of the well, the workers, and the environment.

In our prior decision, we observed that the record already included evidence regarding the Petitioner's area of expertise, the casing and cementing process in off-shore well drilling, and its importance to the safe operation of oil rigs. Without more, the Petitioner's further explanations about various aspects of his work does not substantiate his assertions regarding the national importance of his proposed endeavor.

Similarly, throughout this proceeding, the Petitioner has submitted evidence that provides information to support his previously offered assertions that the oil and gas industry generally and the oil drilling occupation specifically are of national importance. For instance, in the appeal brief, the Petitioner noted:

> The record includes numerous reports and U.S. government agency publications that state the U.S. oil and gas industry, and oil and gas production is vital to the nation, and further that U.S. domestic production benefits the U.S., its national security, and global influence, the national economy, [and is] vital to sustaining our strategic interests. . .

As discussed in the motion to reconsider, we previously acknowledged the submission of such evidence in our decision dismissing the appeal, noting that the record includes substantial evidence regarding the national importance of the oil and gas industry, but this evidence does not establish that the Petitioner's proposed endeavor, which entails work as a drilling engineer specializing in casing and cementing, would have those same implications. We conclude the Petitioner's submission of additional, cumulative evidence regarding the overall importance of the oil and gas industry does not constitute *new evidence* supporting *new facts* that are material to the issues raised on motion which have not been previously submitted in the proceeding. *See* 8 C.F.R. § 103.5(a)(2). Here, the Petitioner has not established new facts on motion sufficient to overcome our previous decision. *See Matter of Coelho*, Dec. at 464. Accordingly, we will dismiss his motion to reopen.

III. CONCLUSION

The Petitioner has not established that our previous decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record at the time of the decision. Further, the evidence provided in support of the motion to reopen does not overcome the grounds in our previous decision. We affirm our previous determination that the Petitioner has not established his eligibility under the first prong of the *Dhanasar* framework, and he is thus not eligible for and does not merit a national interest waiver. While he also asserts on motion that he meets the third *Dhanasar* prong, we will continue to reserve that issue.[2]

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.

[2] *See INS v. Bagamasbad,* 429 U.S. 24, 25-26 (1976).