U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27574545

Date: JUL. 7, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a senior software developer, seeks second preference immigrant classification as an individual of exceptional ability, 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 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 concluded 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 motion to reconsider our most recent decision. On motion, the Petitioner asserts that we erred in dismissing his appeal. He submits a brief and copies of previously submitted 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 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 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 December 2022 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.

[1] Our appellate decision in this matter was ID# 23659641 (AAO DEC. 23, 2022).

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.

The Petitioner first alleges on motion that we "used an incorrect and stricter standard when evaluating the national importance of [his] proposed endeavor." Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests.[2] Accordingly, the "preponderance of the evidence" is the standard of proof governing national interest waiver petitions.[3] While the Petitioner asserts on motion that he has provided evidence sufficient to demonstrate his eligibility for a national interest waiver, he does not further explain or identify any specific instance in which we applied a standard of proof other than the preponderance of evidence in dismissing the appeal.

The Petitioner also requests on motion that we review the entire record of proceeding de novo, but we decline to do so. A motion to reconsider pertains to our most recent decision. In other words, we examine any new arguments to the extent that they pertain to our prior dismissal of the Petitioner's appeal. We cannot consider new objections to the earlier denial, and the Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding. Therefore, we do not address the Petitioner's assertions of error in the Director's decision, as the filing before us does not entitle the Petitioner to a reconsideration of the denial of the petition.

On motion, the Petitioner contends that he we did not "adequately review" evidence submitted to demonstrate the national importance of his proposed endeavor, including his personal statements, company business plan, letters of recommendation, and opinion letters. We disagree.

In our prior decision, we discussed the procedural history of this case, noting that the Petitioner submitted initial evidence, then supplemented the record in response to two subsequent notices issued by the Director prior to the denial of the petition. We observed that the Director indicated in each notice that the Petitioner had not submitted sufficient evidence regarding national importance. We also explained that we considered the entire record of proceeding, including the Petitioner's responses to both of these notices, in our discussion of the evidence in our appellate decision.

We specifically addressed the Petitioner's personal statements in detail in our prior decision, discussing the Petitioner's intention to offer software development services to U.S. businesses through his own company, describing the services that he already provided to three different clients, and his prospective plans to develop and market software solutions to his clients. We also took note of the letters provided by the Petitioner's customers which suggested that his software development work

[2] *See Matter of Chawathe*, 25 I&N Dec. at 375 (AAO 2010); *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965).

[3] *See 1 USCIS Policy Manual*, E.4(B), https://www.uscis.gov/policy-manual.

was important to their businesses. We concluded the Petitioner's statements and his clients' letters did not collectively show wider benefits at a level commensurate with national importance.

We also acknowledged the Petitioner's materials which provided general information about the Petitioner's industry and field of work, but did not relate specifically to his proposed endeavor, emphasizing that while this evidence provided information on topics such as technical innovation and U.S. competitiveness in STEM education, the Petitioner did not provide sufficient specific details as to how his proposed endeavor would have national importance in these areas, rather than more limited effects such as benefit to his company's individual clients.

The Petitioner also references previously submitted opinion letters on motion for the proposition that they "supported the economic impact of [his] endeavor." But on motion, the Petitioner does not address the concerns that we expressed in our prior decision about the probative value of these letters in determining the national importance of his endeavor. In our decision, we determined upon review of the letters that the authors primarily described the industry in which the Petitioner intends to work, without establishing how the Petitioner's work, in particular, would have national importance. We noted for instance, that the third and most recent letter included general information about IT, small businesses, irrigation, and the effect of the COVID-19 pandemic (which occurred after the petition's filing date, and therefore did not factor into the proposed endeavor as initially described). We concluded that general assertions of this kind do not establish the national importance of the Petitioner's specific proposed endeavor.

We affirm our previous determination that these opinion letters are not persuasive evidence sufficient to establish the national importance of the Petitioner's endeavor. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* For the sake of brevity, we will not address other deficiencies within the authors' analyses on motion.

On motion, the Petitioner also points to his company's business plan for the proposition, among other things, that the plan "confirmed [his company] will create both direct and indirect jobs." Notably, we specifically addressed the job creation predictions put forth in the business plan in our previous decision. We concluded the Petitioner's forecast that his company would have ten employees within its first five years of operation was not economically significant within the *Dhanasar* national importance framework. We also found mathematical errors and ambiguous data within the Petitioner's indirect job creation estimates in the business plan which we described in detail. On motion, the Petitioner does not acknowledge our concerns or attempt to resolve the inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Here, the Petitioner does not sufficiently address the specific adverse determinations and conclusions in our prior decision or establish that they were in error; rather, he primarily relies on vague and general assertions that we disregarded evidence or employed an incorrect standard of proof. He also asks that we review the entire record de novo and render a new 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 Matter of O-S-G-*, 24 I&N Dec. 56, 58

(BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision). We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

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.

ORDER: The motion to reconsider is dismissed.