U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25690978

Date: MAY 04, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a manufacturing business for cleaning products, seeks second preference immigrant classification for its president, the Beneficiary, 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 Beneficiary did not qualify for the underlying classification and the record did not establish that the Petitioner is eligible for, or otherwise merits a national interest waiver as a matter of discretion. The Director dismissed the Petitioner's combined motion to reopen and reconsider, but then moved sua sponte to reopen the proceeding. In a second decision, the Director concluded that the Beneficiary qualified for classification as a member of the professions holding an advanced degree, but that the Petitioner did not establish that a waiver of the job offer requirement would in the national interest. We dismissed the appeal of the second decision, finding the Petitioner had not established that his proposed endeavor is of national importance. The matter is now before us again on motion to reconsider.

Upon review, we will dismiss the motion and the petition will remain denied.

I. LAW

A motion to reconsider must establish that our decision was based on an incorrect application of law or United States Citizenship and Immigration Services (USCIS) 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the benefit sought. We do not consider new facts or evidence in a motion to reconsider.

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(l)(i). Therefore, the filing before us is not a motion to reconsider the denial of the petition; instead, it is a motion to reconsider our most recent decision, the dismissal of the Petitioner's appeal. Accordingly, we examine any new arguments to the extent that they pertain to our prior dismissal of the Petitioner's appeal.

In requesting a national interest waiver of the job offer requirement, a petitioner must establish that they merit a discretionary waiver of the requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. Matter of Dhanasar states that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates 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.

II. ANALYSIS

The Petitioner is a manufacturing business of cleaning products in Texas, and the Beneficiary is its president. In our appellate decision, we determined that the Petitioner did not establish that the Beneficiary's proposed endeavor has national importance under the first prong of the Dhanasar analytical framework. Because the documentation in the record did not establish the national importance of his proposed endeavor, the Petitioner had not demonstrated eligibility for a national interest waiver.[2]

As discussed in our prior decision, the Petitioner initially indicated in its petition that the proposed endeavor had national importance based on its economic benefits. The Director first denied the petition in 2019, finding the Petitioner did not establish its economic benefit claims. While the Petitioner's motion to reopen the denial was pending, the Petitioner submitted additional evidence relating to its increased production of hand sanitizer during the COVID-19 pandemic in 2020. The Director dismissed the motion to reopen, but later reopened the decision sua sponte and issued a request for evidence relating to deficiencies with the Petitioner's financial documentation to support its economic benefit claims. In the reply, the Petitioner focused its arguments on the COVID-19 pandemic. The Director denied the petition for a second time due to insufficiency of evidence demonstrating the Petitioner's claims of job creation and other economic benefits. The Director noted that the Petitioner's claims surrounding the public health arguments during the COVID-19 pandemic in 2020 cannot establish eligibility as of the petition's filing date in 2018.

In its appeal of the second denial, the Petitioner took issue with the Director not considering the public health benefits of its business since "the prevention of disease and illness [were] relevant before March 2020." The Petitioner claimed in its appeal that it "did not abandon its economic claims, but rather, bolstered the overall national importance argument with a second, alternative analysis" regarding public health.

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[1] See also Poursina v. USCIS, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[2] We concluded that further analysis of his eligibility under the remaining prongs outlined in Dhanasar would serve no meaningful purpose. We reserved the remaining arguments concerning eligibility under the second and third Dhanasar prongs. 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).

Our appellate decision pointed out that at the time of filing the petition in 2018, "the Petitioner did not assert that sanitation and hygiene lent national importance to its endeavor. The arguments the Petitioner made in 2021 hinged, to a large extent, on changes that the company made in 2020 in order to address the pandemic. Many of the Petitioner's products in 2018 such as rust removers and dry cleaning agents, concerned areas with no direct relationship to public health."

On the motion before us, the Petitioner submits a brief and a new statement from the Beneficiary. The Petitioner asserts, "It appears the AAO misunderstood or overlooked key facts" in its decision. The Petitioner argues that "[the Beneficiary] created the [redacted] brand around 2011 which included U.S. blended hand sanitizer and hand soap based on [the Beneficiary's] proprietary formulas sourced from raw ingredients from American chemical suppliers." The Petitioner further argues that,

> [the Beneficiary] did not make changes in order to address the pandemic. He already manufactured hand sanitizer and soaps in 2018. Rather, [the Beneficiary] increased his manufacturing of these products to meet the demand of the pandemic at a time when they were in high demand and short supply. Thus [the Beneficiary's] product line in 2018 did in fact include products which had a direct relationship to public health. Furthermore, the Centers for Disease Control also considers laundry detergent as directly related to public health.

This motion includes a list of the Petitioner's cleaning products and an invoice for hand soap and sanitizer from 2017, both of which were submitted with the initial petition. The Petitioner argues that the facts "establish that [the Beneficiary's] endeavor was of national importance as of the time of filing in 2018 as it had the potential to enhance societal welfare, a potential which came to fruition in 2020. Therefore, . . . the arguments regarding enhancements to societal welfare still remain and satisfy the legal requirements for national importance."

Our appellate decision states, "A petitioner must meet eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(l). The Petitioner's activities during 2020 cannot retroactively establish eligibility as of the Petitioner's August 2018 filing date." "[T]he Petitioner did not assert that sanitation and hygiene lent national importance to its endeavor" in its initial petition in 2018. Instead, it submitted evidence relating to the economic benefits of its endeavor with its petition. It was not until after submitting a motion to reopen in 2020 that the Petitioner provided evidence relating to the pandemic and public health claims.

To establish merit for a motion to reconsider of our latest decision, a petitioner must both state the reasons why the petitioner believes the most recent decision was based on an incorrect application of law or policy; and it must also specifically cite laws, regulations, precedent decisions, and/or binding policies it believes we misapplied in our prior 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). While the Petitioner asserts that we "misunderstood or overlooked key facts"; it has not indicated our previous appeal decision was based on an incorrect application of law and/or policy. The Petitioner does not

identify specific errors or explain how our prior appeal decision did not follow the regulations and policy guidance.

In light of the above, we conclude that this motion does not meet all the requirements of a motion to reconsider and must therefore be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

III. CONCLUSION

The Petitioner therefore has not overcome our prior decision or shown proper cause to reconsider this matter. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The motion to reconsider is dismissed.