U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27290965

Date: SEP. 11, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a cargo and freight agent and entrepreneur, 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 although the Petitioner qualifies as an advanced degree professional, the Petitioner did not establish that a waiver of the job offer requirement would be in the national interest. We dismissed a subsequent appeal. The matter is now before us on motion to reconsider.

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 proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). 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.

While neither 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 and states that USCIS may, as a matter of discretion, grant a petition 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.

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. For the national interest determination, the Director found that the Petitioner did not meet the first prong on the Dhanasar framework. Although the Director found substantial merit in the Petitioner's proposed endeavor in entrepreneurialism, the Director concluded that the record did not

establish that the proposed endeavor has national importance. The Director further found that the Petitioner did not establish he is well established to advance his proposed endeavor, and 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.

In dismissing the Petitioner's subsequent appeal, we concurred with the Director that the proposed endeavor has substantial merit. We also found that the Petitioner had not established that the proposed endeavor has national importance, as required by the first prong of Dhanasar. Therefore, we concluded that the Petitioner is not eligible for a national interest waiver. We reserved our opinion regarding whether the record satisfies the second and third prongs of Dhanasar, as it was not necessary to reach these based on the Petitioner not meeting the first prong.

On motion, the Petitioner submits a brief and contests the correctness of our prior decision. In support of the motion, the Petitioner cites to recent USCIS guidance related to entrepreneurs to show that his proposed endeavor has substantial merit.[1] However, the substantial merit of the Petitioner's proposed endeavor is not at issue, as the Director found that the proposed endeavor has substantial merit, and we concurred in our appeal decision.

The remainder of the Petitioner's brief restates his assertions made in his appeal, almost word for word, to show that his proposed endeavor has national importance, that he is well positioned to advance his proposed endeavor, and that on balance, waiving the job offer requirement would benefit the United States.

To establish merit for a motion to reconsider of our latest decision, a petitioner must both state the reasons why it 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 and restating his initial claims; 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).

Accordingly, although we acknowledge that the Petitioner submits a brief, we determine that the Petitioner does not directly address the conclusions we reached in our immediate prior decision or provide reasons for reconsidering of those conclusions. Likewise, the brief in support of the current motion also lacks any cogent argument as to how we misapplied the law or USCIS policy in dismissing

[1] The Petitioner references USCIS guidance relating to specific evidentiary considerations for entrepreneur petitioners requesting a national interest waiver. USCIS guidance recognizes that an entrepreneur petitioner may have unique aspects of evidence for the proposed endeavor, therefore, in addition to the generally applicable evidence, an entrepreneur petitioner may submit the following types of evidence to satisfy *Dhanasar's* three prong framework: evidence of ownership and role in a U.S. entity; degrees, certifications, licenses, and letters of experience to corroborate claims for advancing the proposed endeavor; investments, commitments to invest, or future intent to invest; incubator or accelerator participation; awards or grants; intellectual property held by the petitioner or the petitioner's entity; published materials about the petitioner or their entity; revenue generation, growth in revenue, and job creation; and letters from third parties, such as investors, government entities, or established business associations. See generally 6 USCIS Policy Manual F.5(D)(4), https: //www.uscis.gov/policy-manual.

the appeal. We thoroughly analyzed the Petitioner's evidence and arguments and provided a complete decision reaching the correct conclusion.

While the Petitioner disagrees with our previous conclusion that the record did not show the national importance of the Petitioner's proposed endeavor, on motion to reconsider, he has not established that we misapplied law or USCIS policy, and that our prior decision was incorrect based on the evidence in the record at the decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.