U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32871280

Date: SEP. 16, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a software developer and an entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this 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 record did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and 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 motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

In our prior decision, incorporated here by reference, we determined the Petitioner did not meet the first prong of the analytical framework set forth in *Matter of Dhanasar,* 26 I&N Dec. 884 (AAO 2016), for adjudicating national interest waiver petitions. Specifically, we concluded the Petitioner did not establish the national importance of his proposed endeavor. *See id.* at 889 (providing in relevant part that, to establish eligibility for a national interest waiver, the petitioner must establish their specific proposed endeavor has national importance).

On motion, the Petitioner submits a brief in support of the combined motion and a copy of our prior decision. However, the Petitioner does not submit any new evidence and does not assert any new facts supported by documentary evidence that establish eligibility, as required on motion to reopen. *See*

8 C.F.R. § 103.5(a)(2), (4). As such, his submission does not meet the requirements of a motion to reopen, and his motion must be dismissed.

On motion to reconsider, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner relies on general assertions of eligibility for a national interest waiver and claims that the Director improperly denied his petition. The Petitioner further contends that our prior decision incorrectly relied on *Matter of O-R-E-,* 28 I&N Dec. 330 (BIA 2021), in determining any errors in the Director's decision were harmless.

We acknowledge the Petitioner's arguments on motion; however, he has not identified an incorrect application of law or policy that rendered our decision incorrect based on the record at the time of that decision. The Petitioner emphasizes on motion "that his proposed endeavor aligns with the essential priorities of the government," specifically STEM advancement. He points to the USCIS Policy Manual as indicating the importance of contributions to the STEM fields, arguing the expert letters and media articles he provided support a finding that his proposed endeavor is of national importance. In our appellate decision, we considered the evidence the Petitioner references on motion, and we reiterated that although the field in which the Petitioner proposes to work may be important, the relevant consideration for purposes of the petition is whether the specific proposed endeavor rises to the level of national importance. *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner continues to argue on motion that the evidence in the record supports a finding that his proposed endeavor "will directly contribute to enhancing the U.S.'s economic competitiveness and support national security," reasserting the arguments he made on appeal. However, the Petitioner does not identify any specific incorrect application of law or policy with regard to the identified evidence that renders our prior decision incorrect.

Further, although the Petitioner continues to allege the Director was "negligent and biased" in their decision, we again note our review on motion is limited to reviewing our prior decision. *See* 8 C.F.R. § 103.5(a)(1)(ii). In our decision on the Petitioner's appeal, we correctly concluded he had not established the Director exhibited bias in making the decision below nor that the identified errors in that decision were prejudicial such that they rose above being harmless. Additionally, we reviewed the record de novo in rendering our appellate decision and determined that the Petitioner had not established eligibility for a national interest waiver based on the record at the time.

The Petitioner has not submitted additional evidence in support of the motion to reopen, and the Petitioner has not identified any new facts or supported any assertions with new documentary evidence or affidavits. 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. Therefore, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.