U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33920425

Date: SEP. 16, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur intending to operate in the commercial flooring industry, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, and a national interest waiver of the job offer requirement attached to this classification. See section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Workers (national interest waiver), concluding that the Petitioner qualifies for the EB-2 classification as an advanced degree professional but the record did not establish that a waiver of the Petitioner's job offer requirement is in the national interest. We adopted and affirmed the Director's decision as to the Petitioner's ineligibility for a national interest waiver and dismissed the appeal. The matter is now before us as a combined motion to reopen and to reconsider. 8 C.F.R. § 103.5(a)(2)-(3).

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 combined 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, we withdrew the Director's finding that the Petitioner qualifies for EB-2 classification as an advanced degree professional, and adopted and affirmed the Director's determination that the Petitioner had not established that he satisfied the three prongs of the Dhanasar framework for adjudicating national interest waivers and provided additional analysis. We hereby incorporate by reference our decision and will refer to relevant parts of the Director's decision and our prior decision to address the Petitioner's arguments on motion.

To establish he merits a discretionary waiver of the job offer requirement "in the national interest" the Petitioner must demonstrate each of the three prongs provided in Dhanasar. We adopted and affirmed the Director's analysis with respect to all three prongs. On motion, the Petitioner does not raise any new facts or assert the Director erred in analyzing prongs two and three of the Dhanasar framework. Regardless of whether the Petitioner establishes on motion his eligibility for the EB-2 classification and prong one of Dhanasar, which he has not, he would remain ineligible for a national interest waiver under prongs two and three of Dhanasar and the combined motion may be dismissed on this ground alone. However, we will also address the Petitioner's arguments on combined motion.

In our decision, we withdrew the Director's determination that the Petitioner established he was an advanced degree professional with a U.S. bachelor's degree or foreign equivalent degree as well as evidence in the form of letters from current or former employer(s) showing five years of progressive post-baccalaureate experience in the specialty. 8 C.F.R. § 204.5(k)(2), (3)(i)(B). Specifically, we found the documents the Petitioner submitted to establish at least five years of progressive post-baccalaureate work experience did not meet the regulatory requirements for employer letters set forth in 8 C.F.R. § 204.5(g) in that they were not authored by his employers, did not have the address of the employers, and did not contain his job duties. On motion, the Petitioner claims the letters supporting his employment were authored by his accountant and that "there was no other person to state the information needed about [his] job description and salary earned." However, the Petitioner does not explain why there is no other person to provide the letters from his former employers, each a separate entity, to corroborate at least five years of employment and establish he is an advanced degree professional. The Petitioner therefore has not established any legal or factual error in our prior decision withdrawing the Director's finding that he qualifies for the underlying EB-2 classification as an advanced degree professional, and he likewise asserts no new facts supported by evidence establishing that he possesses an advanced degree.

On motion, the Petitioner also asserts we failed to analyze the scope of his proposed endeavor as described in his business plan. The first prong, pertaining to the substantial merit and national importance of a proposed endeavor, focuses on the specific endeavor that the foreign national proposes to undertake. Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016). In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Id. In Dhanasar, we noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." Id at 889. We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." Id. at 890.

In his brief, the Petitioner re-summarizes his aim to revolutionize the flooring market by, for example offering knowledge and equipping companies with resources and expertise, and the results his methods will obtain, such as fostering a more competitive and efficient market. He asserts this information was not considered by the Director or on appeal. In support, he quotes from a non-precedent decision we issued on a different case where we remanded to the Director to analyze whether the petitioner was an individual of exceptional ability and to reevaluate the third prong of the Dhanasar framework. The Petitioner then concludes without explanation that our decision in this matter was arbitrary and capricious. Here, we adopted and affirmed in part the Director's decision, which discussed the

Petitioner's business plan at length, e.g., reviewing his projected company growth over five years and his proposed methodologies, and explained the Petitioner had not established his company's prospective impact within the industry, or its potential economic impact, would reach the level of national importance as contemplated by Dhanasar. In our appeal decision, we added that the Petitioner had not established his business management abilities or methodologies would advance or improve upon those already available in the United States to support his claim that his endeavor of starting a commercial flooring business had national or global implications within his field, or that his proposed endeavor would have substantial positive economic effects rather than incremental or nominal impacts. Our review of the record evidences that the Petitioner's business plan was properly considered. We acknowledge the Petitioner's reliance on our non-precedent decision in a different case. However, the decision was not published as a precedent and therefore does not bind U.S. Citizenship and Immigration Services (USCIS) officers in future adjudications. See 8 C.F.R. § 103.3(c) (explaining precedent decisions are binding on all USCIS employees). Further, the parts of the non-precedent decision quoted by the Petitioner is not relevant to our analysis of *Dhanasar's* first prong.

The Petitioner further asserts that we did not analyze whether his proposed endeavor would have societal benefits and refers to documents evidencing "support from Brazilian government entities and significant U.S. academic interest." The Petitioner does not specify where in the record this evidence is contained or how this evidence demonstrates his endeavor would significantly benefit society. To the extent he is referring to an expert letter from an associate professor of marketing, the Director explained the letter was not probative evidence because the author mostly repeated the information in the business plan to assert the national importance of the Petitioner's endeavor without independent analysis. To the extent the Petitioner is referring to letters from a Brazilian and a U.S. business owner in the record, the Director explained the individuals only stated their interest in the Petitioner's endeavor but noted that the record did not contain any communications with potential clients, companies, or individuals to demonstrate that the proposed endeavor would have substantial positive economic impact in the region, here Florida, through employment levels, business activity, investment, or related tax revenue, as contemplated by Dhanasar. Accordingly, the Director's decision did properly consider this and other relevant evidence and weighed whether the evidence demonstrated the national importance of the Petitioner's endeavor.

The Petitioner further asserts that we did not provide sufficient explanation for finding his evidence inadequate. However, we adopted and affirmed the Director's decision the Petitioner did not merit a discretionary waiver of the job offer requirement "in the national interest," but we only did so after engaging in de novo review of the record and providing individualized consideration of the Petitioner's case. *See Edwards v. U.S. Att'y Gen.*, 97 F.4th 725, 734 (11th Cir. 2024) (joining every other U.S. Circuit Court of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). Our review indicates the Director's decision sufficiently addressed the deficiencies in the record in concluding that the Petitioner did not establish the national importance of his proposed endeavor. In reviewing national importance, the Director analyzed the Petitioner's business plan, letters by his acquaintances, and his expert letter, and explained they focused on the importance of the industry, not the proposed endeavor which is the focus of *Dhanasar's* prong one. Matter of Dhanasar, 26 I&N Dec. at 889. The Director also explained how the evidence lacked specificity, and how the evidence did not demonstrate that the proposed endeavor would have substantial positive economic effects, significant potential to employ

U.S. workers, or has broader implications in the field on the scale contemplated by Dhanasar. Id. at 889-890. The Petitioner does not raise new facts or arguments addressing these issues raised by the Director.

The Petitioner therefore has not demonstrated we erred as a matter of law or policy in our prior decision or that the decision was incorrect based on the evidence in the record of proceedings at the time. Accordingly, he has not satisfied the requirements for a motion to reconsider. See 8 C.F.R. § 103.5(a)(3).

Additionally, the Petitioner has not asserted or established new facts relevant to our appellate decision that would warrant reopening of the proceedings. 8 C.F.R. § 103.5(a)(2). Consequently, we have no basis for reopening or reconsideration of our decision, and the combined motions will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and her underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.