U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26926691

Date: AUG. 16, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a drilling engineer, seeks second preference immigrant classification, as well as a national interest waiver of the job offer requirement attached to this EB-2 immigrant 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 established the Petitioner qualified for the classification as a member of the professions holding an advanced degree, but 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 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 the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

national is well positioned to advance the proposed endeavor; and (3) 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.[3]

In our previous decision dismissing the Petitioner's appeal, incorporated here by reference,[4] we affirmed the Director's decision, concluding that the record did not establish the national importance of the Petitioner's specific proposed endeavor, as required by the first prong of the *Dhanasar* analysis.

For the following reasons, we conclude the Petitioner has not established on motion that our determinations regarding the national importance of the Petitioner's proposed endeavor in our previous decision were 1) based on an incorrect application of law or USCIS policy, and 2) incorrect based on the evidence in the record at the time of the decision.

The Petitioner resubmits on motion a copy of the Petitioner's Form I-140 Petition and supporting documents previously filed in May 2020, as well as his response to the Director's request for evidence (RFE) in November 2021, and a copy of his appeal filed in May 2022, already on record. The Petitioner claims the record demonstrates that his proposed endeavor is of national importance and our prior decision "improperly and erroneously increased the difficulty of satisfying the "National Importance" criterion," relying on *Dhanasar* and the previously vacated decision, *NYSDOT*.

Specifically, the Petitioner asserts that it is easier to qualify for a national interest waiver under the *Dhanasar*'s "national importance" criterion than *NYSDOT*'s "national in scope" standard, and therefore, we must grant the Petitioner the national interest waiver. While we agree that *Dhanasar* no longer emphasizes the geographical scope in evaluating the proposed endeavor's "national" impact, the Petitioner does not cite to any language in *Dhanasar* that such de-emphasis on geographical scope somehow intended to lower the standards and make it easier for petitioners to obtain national interest waivers.[5] In fact, *Dhanasar* intended to "provide greater clarity, apply more flexibly to circumstances of both petitioning employers and self-petitioning individuals, and better advance the purpose of the broad discretionary waiver provision to benefit the United States." *Id.* at 888-89.

The Petitioner further compares his endeavor to that of the petitioner in *NYSDOT* and asserts that if a single engineer working on a bridge project in New York satisfied the "National in Scope" criterion in *NYSDOT*, then the Petitioner should satisfy the national importance standard in *Dhanasar*. However, when issuing *Dhanasar*, we vacated *NYSDOT*. *Id.* at 888. As this petition was filed subsequent to *Dhanasar*, the Petitioner must establish eligibility for a national interest waiver under the framework set forth in the precedent decision. The Petitioner's reliance on the vacated *NYSDOT* framework lacks legal authority and does not demonstrate that our prior decision was incorrect as a matter of law.

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[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[4] Our previous decision in this matter was ID# 23114323 (AAO DEC. 22, 2022).

[5] The Petitioner misquotes from *Dhanasar* that *NYSDOT*'s "National in Scope" criterion "caused relatively few problems in adjudications" and interprets this to mean that we acknowledged that *Dhanasar*'s national importance element is "a very low standard" or "easier to satisfy [than] the NYSDOT "National in Scope" standard." However, in context, *Dhanasar* was addressing how the second prong (well-positioned to carry out the proposed endeavor) did not cause the problems of subjective evaluations. *Id.* at 887.

Dhanasar's first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake and evaluate the evidence in documenting the "potential prospective impact" of the endeavor. *Id.* at 889. In determining whether the proposed endeavor has national importance, *Dhanasar* dictates that we evaluate the specific proposed endeavor for its "broader implications" and notes that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* at 890. Our previous decision identified and evaluated the Petitioner's specific proposed endeavor of continuing his career in the field of drilling and wells engineering and determined that the evidence on record does not sufficiently show that the proposed endeavor activities would create national or global implications in the field, extending beyond the individual organizations or businesses that would employ his services.

Dhanasar further states 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.* We previously determined that the record generally focuses on the Petitioner's past accomplishments in the field as a drilling engineer and does not support the Petitioner's claims of substantial economic effects to the U.S. regional or national economy through job creation or tax revenues directly attributable to his future endeavor. Hence, our prior decision followed the framework set by *Dhanasar*, neither increasing nor decreasing the level of standards set in the precedent decision, and explained why the Petitioner has not demonstrated national importance of his endeavor.

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).

Based on our discussion above, we will not address the Petitioner's remaining assertions on motion regarding other grounds to dismiss the Petitioner's appeal, such as his eligibility under the second prong outlined in *Dhanasar*. There is no constructive purpose in addressing it because it cannot change the outcome of the motion. *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).

As the Petitioner has not met the requirements for a motion to reconsider, we affirm our prior conclusion that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver.

ORDER: The motion to reconsider is dismissed.