U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29385927

Date: DEC. 04, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a chief technology officer, seeks second preference immigrant classification as 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 the Petitioner had not established eligibility for a national interest waiver under the Dhanasar framework. We dismissed the subsequent appeal, concluding the Petitioner had not overcome the Director's finding that the evidence did not establish the national importance of the proposed endeavor. The matter is now before us on combined motion to reopen and reconsider. The Petitioner continues to assert he is eligible for a national interest waiver and submits a brief with additional documents in support.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the combined motion to reopen and reconsider.

I. LAW

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 (1) state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the applicant has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, an applicant must not only meet the formal filing requirements (such as submission of a properly completed Form I 290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. See 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

As a preliminary matter, we note that by regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). The issue before us is whether the Petitioner has submitted new facts to warrant reopening or has established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy. We therefore incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion. While we do not individually discuss each piece of evidence the Petitioner submits with his motion, we have reviewed and considered each one.

A. Motion to Reconsider

Our decision thoroughly explained that much of the evidence submitted in support of the national importance of the endeavor addresses the industry or profession in which the Petitioner intends to work without addressing his specific proposed endeavor. We also provided examples of how the evidence did not "articulate [ ] broader implications for the financial technology industry or otherwise address how the Petitioner's activities for [redacted] are of national importance." We further explained the reasoning behind our determination that the Petitioner did not attribute projected job creation to his specific proposed endeavor.

On motion, the Petitioner states that our prior decision "did not give due regard to the pieces of evidence presented . . . leading to the wrong conclusion that the Petitioner does not meet the criteria to receive the National Interest Waiver (NIW)." Additionally, he states that our insufficient review of the evidence compromised his due process rights. While we acknowledge these assertions, the Petitioner cites to no legal authority or USCIS policy to support his assertions. Moreover, he does not clearly identify what evidence we failed to review and duly regard. For example, he acknowledges that we "duly considered" his professional plan and résumé but then states that even a cursory review of such evidence would lead to the conclusion that his endeavor has broader implications in his field, broadly enhances societal welfare, and offers substantial economic effects. As this example suggests, the Petitioner appears to presume that had we given "due regard" and sufficiently reviewed all evidence, then we would agree with the Petitioner's conclusions about the evidence. However, despite the Petitioner's disagreement with our ultimate determinations, we conclude that our prior decision reflects a correct application of law and USCIS policy and was correct based on the evidence in the record at the time of the decision.

For the foregoing reasons, the Applicant has not shown that our prior decision contained errors of law or policy, or that the decision was incorrect based on the record at the time of that decision. Therefore, the motion does not meet the requirements of a motion to reconsider, and it must be dismissed.

B. Motion to Reopen

Initially, we note that motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. INS v. Doherty, 502 U.S. 314, 323, (1992) (citing INS v. Abudu, 485 U.S. 94, 108 (1988)); see also Selimi v. Ashcroft, 360 F.3d 736, 739 (7th Cir. 2004). There is a strong public interest in

bringing proceedings to a close as promptly as is consistent with giving both parties a fair opportunity to develop and present their respective cases. INS v. Abudu, 485 at 107.

Based on its discretion, USCIS "has some latitude in deciding when to reopen a case" and "should have the right to be restrictive." Id. at 108. Granting motions too freely could permit endless delay when foreign nationals continuously produce new facts to establish eligibility, which could result in needlessly wasting time attending to filing requests. See generally INS v. Abudu, 485 U.S. at 108. The new facts must possess such significance that, "if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case." Matter of Coelho, 20 I&N Dec. 464, 473 (BIA 1992); see also Maatougui v. Holder, 738 F.3d 1230, 1239–40 (10th Cir. 2013). Therefore, a party seeking to reopen a proceeding bears a "heavy burden." INS v. Abudu, 485 at 110. With the current motion, the Petitioner has not met that burden.

On motion, the Petitioner seeks to show that his role as Vice President of Operations is a chief technology officer position (CTO) and that it is sufficiently connected to advancing technology such that it has broader implications in the financial technology and STEM fields.[1] Additionally, he reasserts that the proposed endeavor creates jobs. The evidence includes, but is not limited to, the Petitioner's updated job duties at [redacted] and a list of current projects, evidence demonstrating how operations and technology overlap in the area of enterprise risk management, and reports about how many jobs business loans create.

Although the Petitioner submits a letter of clarification from executive director, [redacted] regarding his work duties and projects at [redacted] we conclude that this is not new evidence. While the letter post-dates our prior decision, its content involves the specific work the Petitioner proposes to undertake when carrying out his proposed endeavor. The Director requested evidence to establish the proposed endeavor's national importance, specifically suggesting that the Petitioner submit a detailed description of the proposed endeavor and why it has national importance. The Petitioner has not explained how another articulation of job duties constitutes new evidence. Rather, we conclude that the Petitioner's submission on motion appears to be devised to address the evidentiary deficiencies we identified in our prior decision in attempt to make a deficient petition conform to USCIS standards. Similarly, the Petitioner's evidence regarding the overlap of operations and technology in the field of risk management is not new in the sense that the Petitioner had both the opportunity to submit this evidence previously and has always had the obligation to support his assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010).

Even if we accept the Petitioner's premise that his proposed endeavor work is that of a CTO and that it advances technology for his employer, these were not the only factors we analyzed to arrive at our prior decision. We did not question that the Petitioner's work benefits his employer, but rather we explained that the record did not demonstrate how his activities resulted in broader implications to the field and substantial positive economic effects. Again, we conclude that the evidence, including the evidence on motion, does not identify the broader implications of his specific proposed endeavor as opposed to demonstrating the broader implications of FinTech or payment solutions generally.

[1] STEM refers to science, technology, engineering, and mathematics.

We reviewed the Petitioner's evidence of job creation, including but not limited to, the [redacted] report that every $15,700 of business loans creates or retains one job, as well as the evidence of how much loan funding [redacted] originated and the geographical breadth of its lending across 46 states.

Although the [redacted] report concludes that "small businesses and microenterprise financing through [community lending institutions] are a potentially cost-effective lever for promoting job recovery," the report also identifies significant limitations and caveats to its study. Further, there is little information about the statistical significance of the data and all appearances indicate that the findings are based on a relatively small sample size. Even if we assume that every $15,700 of loans creates one job, the Petitioner has not demonstrated how this could be extrapolated as a proxy for his proposed endeavor. Specifically, the [redacted] letter provides its historic annual loan origination amounts but does not demonstrate that the Petitioner or his proposed endeavor originated these funds. The letter quotes dollar amounts in loans but does not explain from where these figures derive. Rather, the letter appears to provide [redacted] overall annual loan origination in dollars, which does not distinguish or identify how many loan dollars the specific proposed endeavor originated. As the letter has not identified how many loan dollars the Petitioner's specific endeavor created, we cannot calculate how many jobs the proposed endeavor would create even if we were to apply the suggested [redacted] calculations as a proxy. The Petitioner's conclusions appear to generalize and oversimplify the evidence, which does not sufficiently demonstrate job creation potential attributable to the proposed endeavor.

Accordingly, the Petitioner has not shown proper cause for reopening the proceedings.

III. CONCLUSION

For the reasons discussed, the evidence provided in support of the motion to reopen does not overcome the grounds underlying our prior decision, and the Petitioner's motion to reconsider has not shown that our prior decision was based on an incorrect application of law or USCIS policy. Therefore, the combined motion to reopen and reconsider will be dismissed for the above stated reasons.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.