U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29180216

Date: DEC. 07, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a financial advisor, seeks employment-based second preference (EB-2) 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 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 Petitioner did not establish that he merited a national interest waiver as a matter of discretion. 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.

In our most recent decision on appeal, we noted that the Petitioner's proposed endeavor involved the creation of a company which would pursue two lines of business: business consulting "focused on international trade between the United States and Brazil," and hospital consulting providing expertise in the area of patient blood management (PBM). Regarding the PBM line of business, we noted that the record showed that this is a health care strategy implemented by medical institutions and related entities, rather than business and financial consultants such as the Petitioner. We concluded that the evidence did not establish that the Petitioner's proposed endeavor would have broader implications, but would instead primarily benefit the business' employees and clients and thus have a limited prospective economic impact.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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).

On motion, the Petitioner submits emails regarding a presentation he made to a small group at a hospital regarding blood transfusions, as well as correspondence relating to his membership in the Society for the Advancement of Patient Blood Management (SABM) and its annual conference. Another new document submitted on motion is a letter from a company in [redacted] expressing interest in partnering with the Petitioner's company for its entry into the U.S. market. The Petitioner asserts that these new facts establish eligibility, as they show the national importance of his proposed endeavor.

We first note that this evidence relates to facts and events which occurred well after the petition was filed on January 26, 2021. Specifically, the evidence shows that the Petitioner gave his presentation on blood transfusion on [redacted], 2023, and was welcomed as a member of SABM on [redacted], 2023. In addition, the letter expressing interest in doing business with the Petitioner is dated May 22, 2023. While these are new facts and thus meet the requirements for a motion to reopen, any new facts submitted with a motion must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1); *see also Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm'r 1971). As all of these facts or events occurred more than two years after the petition was filed, they do not help to establish the Petitioner's eligibility.

In addition, even if we were to consider these new documents on motion, the Petitioner does not explain in his brief how this evidence establishes the national importance of his proposed endeavor, which was the only issue on which our previous decision focused. While his SABM membership and presentation support to some extent his positioning to advance his proposed endeavor under the second prong of the *Dhanasar* framework, they do not show the potential broader implications of his work under the first prong. Further, it is not clear that the Petitioner provided business consulting services at the hospital where he spoke, as his business plan proposes, because the emails refer to his "expertise in clinical strategies." And even if the letter from the Brazilian company did provide details about the proposed collaboration, which it does not, it also does not serve to show that the impact of the proposed endeavor would extend beyond the Petitioner's company's employees, clients and business partners to have a broader impact on the field of financial consulting.

For the reasons discussed above, the new facts presented with the Petitioner's motion to reopen are insufficient to overcome the conclusions in our appeal decision.

Turning to the motion to reconsider, in general it 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.

On motion, the Petitioner generally asserts that the Director's decision did not properly consider the evidence in the record, but as noted above, on motion our review is limited to our latest decision. The Petitioner does not specifically identify an instance where our latest decision (or even the Director's decision) disregarded material evidence. In addition, while the Petitioner alleges that previously submitted documents "were not properly analyzed by the Service, violating the Fourth Amendment of the Constitution of the United States of America," the Fourth Amendment in part prohibits "unreasonable searches and seizures." U.S. Const. amend. IV. The brief's citation to the Fourth

Amendment is not relevant to the matter at hand as the Petitioner has not explained how we violated the Fourth Amendment in dismissing the appeal. Citing to an authority that is not relevant to the grounds of the unfavorable decision will not meet the requirements of a motion to reconsider. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("A motion to reconsider is not a mechanism by which a party may file a new brief before the Board raising additional legal arguments that are unrelated to those issues raised before the Immigration Judge and on appeal."). Similarly, the Petitioner reminds us of the preponderance of the evidence standard of review without detailing how our prior decision incorrectly applied that standard. As such, the Petitioner has not identified how our decision was based on an incorrect application of law or policy, or sufficiently explained how it was incorrect based on the evidence in the record at the time. The motion to reopen will be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.