U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29381594

Date: DEC. 21, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, 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 that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he 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 the Petitioner's 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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

In our decision dismissing the appeal, we agreed with the Director that the Petitioner did not meet the first prong of the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). We explained that the Petitioner had not demonstrated the national importance of his proposed endeavor.

On motion, the Petitioner asserts that we "erred in not considering information about the Petitioner's current position to illustrate the capacity in which he intends to work." Our appellate decision, however, specifically considered the Petitioner's initial statement, the information in the cover letter offered in response to the Director's request for evidence (RFE), the September 2022 "Supplemental

Professional Declaration," and the July 2022 [redacted] business plan. We explained that the Petitioner's proposed operation of [redacted] constituted a materially changed proposed endeavor.[1] Additionally, the July 2022 business plan for his company was developed after he filed the petition.[2] *See* 8 C.F.R. § 103.2(b)(1), (12).

In addition, the Petitioner contends that we "applied a stricter standard of proof than permissible when evaluating the evidence of record." Except where a different standard is specified by law, a petitioner must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Under the preponderance of the evidence standard, the evidence must demonstrate that a petitioner's claim is "probably true." *Id*. at 376. Here, the Petitioner does not point to specific examples in our decision where we applied a stricter standard of proof.

The Petitioner further argues that we "erred in not considering precedent decisions," but he mentions only *Dhanasar*.[3] He states: "As in *Matter of Dhanasar*, the Petitioner submitted a probative opinion letter from an expert holding a senior position in academia describing the importance of his proposed endeavor, and more broadly, the benefits of his work for the United States." In *Dhanasar*, "[t]he petitioner submitted probative expert letters from individuals holding senior positions in academia, government, and industry that describe the importance of hypersonic propulsion research as it relates to U.S. strategic interests." *Id*. at 892. In addition, the petitioner "provided media articles and other evidence documenting the interest of the House Committee on Armed Services in the development of

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[1] With regard to his proposed endeavor, we noted that the Petitioner initially planned "to expand [his] programs to improve the American classroom and raise awareness of this teaching style through live performances for the whole family" and "to disseminate this new teaching style to improve the lives of as many people as possible" without any mention of owning and operating [redacted]. We also indicated that the Petitioner developed the business plan for his company after the Director issued the RFE. Although the record shows the Petitioner filed the articles of organization with the Florida Secretary of State approximately three weeks prior to the filing of the petition, the Petitioner did not make a claim to operate [redacted] as part of his initial proposed endeavor. Instead, the Petitioner discussed the teaching and promoting of his [redacted] program rather than operating his [redacted] company, a materially changed proposed endeavor. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12). Further, a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id*. at 176. Accordingly, we did not consider the Petitioner's materially changed proposed endeavor of operating [redacted].

[2] Even if we were to address the information in the Petitioner's [redacted] business plan, he has not shown that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Regarding future staffing, the business plan anticipates that his company would employ 5 personnel in year one, 8 in year two, 13 in year three, 19 in year four, and 25 in year five, but he did not elaborate on these projections or provide evidence supporting the need for these additional employees. In addition, his plan offers revenue projections of $292,000 in year one, $438,000 in year two, $670,140 in year three, $897,988 in year four, and $1,158,404 in year five, but he did not adequately explain how these sales forecasts were calculated. The Petitioner has not demonstrated that his company's future staffing levels and business activity stand to provide substantial economic benefits in Florida or any other region in the United States. While the Petitioner claims that his company has growth potential, he has not presented evidence indicating that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. In addition, although the Petitioner asserts that his endeavor has "considerable potential to employ U.S. workers," he has not offered sufficient evidence that his endeavor offers Florida or any other U.S. region a substantial economic benefit through employment levels, tax revenue, or business activity.

[3] Our appellate decision specifically considered the Petitioner's eligibility under the first prong of the *Dhanasar* analytical framework.

hypersonic technologies and discussing the potential significance of U.S. advances in this area of research and development." *Id.*

Here, the Petitioner submitted a "Written Advisory" from Dr. T-Z-, Professor of Education at [redacted], in support of his national interest waiver. Dr. T-Z- asserted that the Petitioner's proposed work is of national importance based on a nationwide decline in foreign language instruction, a shortage of U.S. foreign language teachers, a demand for multilingual employees, the value of dual-language and multicultural education, and the benefits of studying foreign languages. The issue here, however, is not the national importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. While the advisory opinion cites to online material and news reports to establish the overall importance of foreign language instruction, it does not demonstrate how the Petitioner's specific endeavor as a Portuguese language educator and promoter of Brazilian culture rises to a level of national importance. The letter from Dr. T-Z- does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work offers broader implications in his field, enhancements to societal welfare, or substantial positive economic effects for our nation that rise to the level of national importance.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. While the Petitioner's statements reflect his intention to provide valuable language instruction through music and storytelling, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond the participants in his education programs to impact his field, societal welfare, or the U.S. economy more broadly at a level commensurate with national importance.

The Petitioner has not demonstrated that our appellate decision was based on an incorrect application of law or USCIS policy and that our decision was incorrect based on the evidence in the record at the time of the decision. Because the Petitioner has not established that we erred as a matter of law or USCIS policy in our decision, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and his underlying petition remains denied.

ORDER: The motion to reconsider is dismissed.