U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28767568

Date: NOV. 07, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, an electrical engineer and assistant project manager, 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, concluding that the record did not satisfy the first *Dhanasar* prong, and reserved our opinion on the second and third *Dhanasar* prongs. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). The matter is now before us on a combined motion 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 motion.

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.

On motion to reopen, the Petitioner claims that we "failed to properly take into consideration the impact of [the Petitioner's] proposed endeavor from a STEM perspective" and submits a report by the National Science and Technology Council on "Critical and Emerging Technologies List Update" submitted to the White House in February 2022. However, the Petitioner does not address how this report demonstrates national importance of the Petitioner's proposed endeavor other than that his endeavor is in STEM field. We already noted in our prior decision, incorporated here by reference,[1]

[1] *See* ID# 26399895 (AAO May 04, 2023).

that even though the Petitioner's endeavor falls within a STEM field, this does not automatically show eligibility for a national interest waiver. We cited to USCIS policy manual stating that the STEM endeavor must meet the first prong of having substantial merit and national importance under the first prong of *Dhanasar*. *See* 6 USCIS Policy manual F.5(D)(2), https://www.uscis.gov/policymanual. Aside from this report, the Petitioner has not asserted any new facts or provide other documentary evidence to establish national importance of his endeavor. Therefore, we will dismiss the Petitioner's motion to reopen.

Additionally, the Petitioner asserts that we erred in "failure to provide analysis as to the petitioner's eligibility under the second and third *Dhanasar* prongs" and as a result, the Petitioner did not have "an opportunity to rebut any findings under the law that may have been prejudicial to the Petitioner's ability to properly argue the merits of his case." Although the Petitioner asks that we reopen the case, he is not offering any new fact or evidence but claiming an error or incorrect application of law and policy. Therefore, we will consider this claim as a motion to reconsider.

As we previously concluded that the Petitioner did not satisfy the first prong of the *Dhanasar*, he is not eligible for a national interest waiver as a matter of discretion and the remaining arguments concerning the eligibilities under second and third prongs of *Dhanasar* need not be discussed. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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). On motion, the Petitioner does not rely on any precedent law, regulations, or policy to support his claim that we must provide analysis on all three prongs of *Dhanasar* on appeal. In addition, the Petitioner was given the opportunity to provide additional documentation and arguments regarding these remaining prongs when the Director issued a request for evidence (RFE) on March 24, 2022.

The Petitioner further contends on motion to reconsider that we misapplied *Dhanasar*'s standards in determining that his endeavor does not have national importance under the first prong. However, the Petitioner does not specifically point to where and how we erred. Instead, the Petitioner offers the same claims made in the RFE and in the initial filing – that the Petitioner's endeavor is nationally important because his past work and projects involved critical infrastructures in several countries, such as Venezuela and Ghana, and are international in scale. However, our prior decision correctly evaluated the Petitioner's past experience and skills as factors to be considered in the second prong – whether he is well-positioned to advance his endeavor. In determining national importance under the *Dhanasar*'s first prong, the Petitioner needs to demonstrate the "potential prospective impact" of his specific endeavor, and we evaluate whether the Petitioner's specific endeavor has broad implications or substantial economic effects as contemplated by *Dhanasar*. *See Dhanasar*, 26 I&N Dec. at 889-90.

In our prior decision, we discussed the evidence raised by the Petitioner on motion and ultimately concluded that the record did not provide sufficient information and objective evidence to establish how his proposed endeavor of being employed as an electrical engineer and a project manager would "extend beyond his employer and its customers to impact the field of energy systems maintenance and design or the U.S. economy more broadly at a level commensurate with national importance." As a result, we dismissed the Petitioner's appeal under the preponderance of evidence standard. On motion,

the Petitioner disagrees with our conclusions, but he has not provided a sufficient basis for reconsideration by showing that we erred as a matter of law or policy.

The Petitioner also claims that his current employment as an "IT Assistant Project Manager" at [redacted], "a global, multinational bank which was named the [redacted] in 2012," demonstrates national importance of his endeavor. The Petitioner explains that he is "leading a crucial project for [redacted] that is both national and international in scope" and "is in charge of a software transition that will update the entirety of [redacted] computing systems to VitechCORE technology." The Petitioner, however, does not explain how his position as a project manager over software transition at a bank is related to his initial proposed endeavor as an electrical engineer who "would bring his technical knowledge of circuit panel design to numerous utility companies around the country." While the Petitioner asks that we reconsider our previous decision, he does not identify and discuss specific and relevant evidence that he believes we overlooked or misconstrued in arriving at our conclusions, or how we misapplied law, regulation or USCIS policy. Instead, the Petitioner reiterates general arguments regarding his endeavor's national importance that were previously considered and dismissed on appeal. Accordingly, we will dismiss his motion to reconsider.

We conclude that the Petitioner's submission of additional evidence in support of the motion to reopen does not establish eligibility. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the combined motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.