U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29061417

Date: NOV. 20, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a construction manager, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for a national interest waiver under the three-prong framework provided by *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). We dismissed a subsequent appeal, concluding that the Petitioner did not demonstrate that his proposed endeavor has national importance as required under the first prong of the *Dhanasar* framework.[1] 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.

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).

The motion includes an updated personal statement from the Petitioner, dated June 15, 2023, but otherwise consists of evidence that was already in the record as well as a brief that includes lengthy quotations from that previously submitted evidence. In our decision dismissing the appeal, we

[1] Because this issue was dispositive of the appeal, we reserved discussion of the Petitioner's appellate arguments that he satisfied the second and third prongs under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).

addressed the fact that the Petitioner had originally intended to operate his own telecommunications infrastructure construction business but, at the time he responded to the Director's request for evidence (RFE), he had accepted a full-time position as a construction supervisor with a well-established established U.S. company in this field. We emphasized that, pursuant to 8 C.F.R. § 103.2(b)(1), the Petitioner is required to establish his eligibility at the time of filing and noted that a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). However, we did not dismiss the appeal solely on the grounds that the Petitioner had made a material change to his proposed endeavor. Rather, we reached a conclusion that he did not meet his burden to establish that either his original proposed endeavor *or* the endeavor described in response to the RFE met the "national importance" element of the first prong of the *Dhanasar* framework.

In his updated personal statement, the Petitioner addresses our determination that he had materially changed the nature of his proposed endeavor subsequent to filing the petition. Specifically, he explains the personal circumstances that led him to accept employment with an established U.S. employer rather than pursue his original plan to own and operate his own construction management business in the telecommunications infrastructure field. However, he does not assert how these new facts establish his eligibility under the first prong of the *Dhanasar* framework. While the explanation provided in the updated personal statement sheds light on the Petitioner's change in plans, this new information does not have the potential to change the outcome of the appeal or provide proper cause for reopening. Accordingly, the motion to reopen will be dismissed.

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). As with a motion to reopen, our review 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 contests the correctness of our prior decision. Specifically, the Petitioner asserts on motion to reconsider that we misapplied the preponderance of evidence standard, referencing *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). The Petitioner further states that we "erred in not considering precedent [d]ecisions," specifically *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

In relevant part, *Matter of Chawathe* provides: "Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is 'more likely than not' or 'probably' true, the applicant or petitioner has satisfied the standard of proof." *Matter of Chawathe*, 25 I&N Dec. at 376 (citing *Cardozo-Fonseca*, 480 U.S. at 431 (discussing "more likely than not" as a greater than 50 percent chance of an occurrence taking place)). The truth is to be determined not by the quantity of evidence alone but by its quality. Thus, in adjudicating the petition pursuant to the preponderance of the evidence standard, a director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

We incorporate by reference our analysis of the record in our prior decision, in which we addressed why particular evidence in the record bears insufficient relevance, probative value, or credibility,

specifically within the first prong of the *Dhanasar* framework. We note that, although the Petitioner references on motion "the sheer multitude of argumentation and documents" in the record and states he "disagree[s] with the underlying [d]ecision," he does not sufficiently articulate how we incorrectly applied *Chawathe* to the facts presented and within the context of the *Dhanasar* framework. The Petitioner's broad claim that the facts presented here are similar to those presented in *Dhanasar* and therefore should have resulted in the approval of the petition is unpersuasive.

We note the Petitioner makes a specific allegation of error by contending that we overlooked a September 2020 expert opinion letter from a [redacted] University professor, who discusses the Petitioner's eligibility under the *Dhanasar* framework. The brief submitted on motion includes lengthy excerpts from both this letter and a letter from a [redacted] University professor dated October 2022. The Petitioner acknowledges that we found the latter letter unpersuasive and does specifically contest our reasons for reaching this conclusion. Rather, he states that these expert opinions, taken together, establish the national importance of his proposed endeavor.

We observe that page four of our prior decision contains multiple direct quotations from the [redacted] University professor's letter and reflects our consideration of its contents. Notably, the letter, which underscored the Petitioner's plans to provide telecommunications construction management services to underserved rural areas through his own company, was not supported by the Petitioner's own business plan, which indicated his intent to provides service related to "construction and maintenance of urban structures." We may, in our discretion, use as advisory opinion statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. However, where an opinion is not in accord with other information in the record, we are not required to accept or may give less weight to that evidence. *Matter of Caron Int'l*, 19 I&N Dec. 791 (Comm'r 1988).

We also addressed the remainder of the Petitioner's initial evidence and the evidence provided in response to the RFE. We explained why the information contained in the business plan, personal statements, expert opinions, industry reports and articles, and employer publications was not sufficient to establish how his specific proposed endeavor has national importance based on the factors described in *Dhanasar*. Further, although the Petitioner asserts on motion that we erred by concluding that he had made a material change to his proposed endeavor subsequent to filing the petition, we nevertheless explained why he did not meet his burden to demonstrate how either of the proposed endeavors met *Dhanasar*'s "national importance" requirement. Although the Petitioner disagrees with our conclusion, he does not address most of our specific findings or otherwise articulate how we misapplied the law or USCIS policy in the adjudication of the appeal. In fact, many of the Petitioner's assertions on motion mirror the claims he made on appeal and were already addressed in our prior decision.

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. Because the submission does not satisfy the requirements of a motion to reconsider, it will be dismissed. *See* 8 C.F.R. § 103.5(a)(3), (a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.