U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28840547

Date: OCT. 25, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner 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 EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner is eligible for a national interest waiver. We dismissed a subsequent appeal. 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). 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).

Despite indicating on the Form I-290B, Notice of Appeal or Motion, that the submission is, in part, a motion to reopen, the Petitioner does not state a new fact, nor does he support such statement with documentary evidence. Instead, the Petitioner references—and he resubmits—evidence in the record of proceedings at the time of the decision and he reasserts that that evidence establishes eligibility, despite our prior analysis. Because the Petitioner neither states a new fact nor supports such a statement with documentary evidence, the submission does not satisfy the requirements of a motion to reopen; therefore, we will dismiss it. 8 C.F.R. § 103.5(a)(4); *see also* 8 C.F.R. § 103.5(a)(2).

Next, 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, the Petitioner contests the correctness of our prior decision. Specifically, the Petitioner asserts that we misapplied the preponderance of evidence standard, referencing *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010), and *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987). 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)). In turn, *Dhanasar* provides that, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

We incorporate by reference our analysis of the record in our prior decision, in which we addressed why particular evidence bears insufficient relevance, probative value, or credibility, specifically within the *Dhanasar* framework. We note that, although the Petitioner references on motion "the sheer multitude of argumentation and documents" in the record and he "disagree[s] with the underlying [d]ecision," he does not establish that we incorrectly applied *Cardozo-Fonseca*, *Matter of Chawathe*, or *Dhanasar* therein.

Because 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, we will dismiss the motion to reconsider. 8 C.F.R. § 103.5(a)(4); *see also* 8 C.F.R. § 103.5(a)(3).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.