U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28401026

Date: SEP. 22, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a civil and mechanical engineer, seeks second preference 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 EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). While neither statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions and states that USCIS may, as a matter of discretion, grant a petition if the petitioner demonstrates that: 1) the proposed endeavor has both substantial merit and national importance; 2) the individual is well-positioned to advance their proposed endeavor; and, 3) on balance, waiving the job offer requirement would benefit the United States.

The Director of the Texas Service Center denied the petition, concluding that the record established that the Petitioner qualified for the classification as an advanced degree professional, but did not establish that a waiver of the required job offer is in the national interest. We dismissed a subsequent appeal. The matter is now before us on motion to reconsider.[1]

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). 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.

[1] The Petitioner requests in the alternative that the Texas Service Center reconsider its initial denial. *See* 8 C.F.R. § 103.3(a)(2)(iii). However, this regulation, which is applicable to appeals on adverse decisions, permits the office that issued an unfavorable decision to reconsider its decision for favorable action instead of forwarding the appeal to the AAO. *Id*. In this motion, the decision at issue is our decision to dismiss the Petitioner's appeal, which the Petitioner moves us to reconsider pursuant to 8 C.F.R. § 103.5(a)(3). The office that has jurisdiction over motions is the office that made the latest decision in the proceeding, which in this case is the AAO. *See* 8 C.F.R. 103.5(a)(1)(ii). Therefore, the Texas Service Center no longer has jurisdiction over this matter and 8 C.F.R. § 103.3(a)(2)(iii) is not applicable.

In our previous decision dismissing the Petitioner's appeal, incorporated here by reference, we concluded that the record did not establish the national importance of the Petitioner's proposed endeavor, as required by the first prong of the *Dhanasar* framework.

On motion, the Petitioner contests the correctness of our prior decision. He asserts that our conclusion was based upon an incorrect application of *Matter of Dhanasar*. In support of this claim, the Petitioner relies primarily on our vacated decision in *Matter of New York State Department of Transportation (NYSDOT)*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998).[2] Specifically, the Petitioner asserts that his proposed endeavor would have met the prior "national in scope" standard established in *NYSDOT* and that, because *Dhanasar* did not "increase the difficulty" of establishing national importance as compared to establishing national in scope, his endeavor must therefore also have national importance.

The Petitioner asserts that *NYSDOT's* national in scope requirement was a "very low standard," based upon his characterization of the beneficiary in *NYSDOT* as "a single engineer working on a bridge project in New York," and the statement in *Dhanasar* that it "caused relatively few problems in adjudications." *See Matter of Dhanasar*, 26 I&N Dec. at 887. The Petitioner further asserts that *Dhanasar's* national importance standard should be just as easy to establish, if not easier, because *Dhanasar*, in changing standards, sought to reduce the emphasis on the geographic impact of a proposed endeavor. *Id.*

However, the Petitioner misreads *Dhanasar's* statement that the prior national in scope standard "caused relatively few problems" to mean that it was an easy one to reach. In reading this discussion in the context of the decision, this language refers to the relative ease for adjudicators in implementing this standard and noting that it did not frequently result in the "problem" of subjective or unpredictable adjudications. *See id.* It does not necessarily follow that the national in scope standard was a low one; a standard may be clear for adjudicators to implement and predictable for petitioners to understand, regardless of whether it is an easy or difficult one to reach. But more generally, regardless of whether the Petitioner fairly characterizes the meaning of "national in scope," the standard is not applicable here. While we appreciate that the Petitioner is a transportation engineer, and thus is in a similar field to the beneficiary in *NYSDOT*, that framework has been replaced by the analytical framework introduced by our binding precedent decision in *Dhanasar*.

Additionally, the only language in *Dhanasar* that directly compares the two standards is the statement, invoked by the Petitioner, that the national in scope standard was "occasionally . . . construed too narrowly by focusing primarily on the geographic impact" of the proposed endeavor. *Id.* at 887. But this statement does not imply that national importance should in general be easier to establish than national in scope. Moreover, our decision to dismiss the Petitioner's appeal did not rely improperly upon finding a lack of geographic breadth in the potential impact of the proposed endeavor, and the Petitioner does not assert that it did.

In determining whether a petitioner has established the national importance of their proposed endeavor, we must rely on the language of *Dhanasar*, which requires that we consider an endeavor's

[2] *NYSDOT*, which was vacated by our precedent decision in *Matter of Dhanasar*, established the previous framework used for evaluating national interest waiver petitions. *See Matter of Dhanasar*, 26 I&N Dec. at 884.

potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

This is the standard by which the Petitioner's proposed endeavor was evaluated in our prior decision, and the Petitioner's assertions on motion—primarily comparing his endeavor to the endeavor in *NYSDOT* and asserting that it is easier to establish eligibility under *Dhanasar* than *NYSDOT*—do not demonstrate that we incorrectly applied this standard. In dismissing the appeal, we concluded that the Petitioner had not submitted sufficient evidence to establish what the broader implications of his work would be, or that his work would impact his field more broadly to demonstrate national importance. For example, we noted that much of the evidence related to the Petitioner's past positions rather than to his specific endeavor, and that the record lacked documentary evidence to support the Petitioner's claims about his grant proposals to the Transportation Research Board and the potential impact of his specific proposed endeavor to advance the field of transportation and engineering.

On motion to reconsider, the Petitioner relies on a decision that no longer carries legal authority and does not demonstrate that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.