U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28603622

Date: SEPT. 27, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a production engineer in the oil and gas industry, 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 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 Petitioner did not establish that he qualifies for EB-2 classification as a member of the professions holding an advanced degree or that he is eligible for a national interest waiver. We dismissed a subsequent appeal, where we applied the analytical framework set forth in *Matter of Dhanasar* for adjudicating national interest waiver petitions. *Matter of Dhanasar,* 26 I&N Dec. 884, 889 (AAO 2016). Contrary to the denial, we concluded that the Petitioner is eligible for the EB-2 classification as an advanced degree professional. Notwithstanding this favorable determination regarding the Petitioner's EB-2 classification, we determined that the Petitioner did not establish that his endeavor has national importance under the first prong of the *Dhanasar* framework and thus we concluded that the Petitioner did not overcome the denial regarding his eligibility for a national interest waiver.[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 motion.

First, we turn to the motion to reopen, which 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).

[1] We declined to reach whether the Petitioner meets the remainder of the second and third prongs under the *Dhanasar* framework, citing the first prong as being dispositive of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *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 submits copies of two unpublished AAO decisions and a copy of a previously submitted paper containing information that was intended for presentation at a 2007 oil conference in Mexico. Regarding the latter, because the paper was previously submitted and reviewed as part of the appeal process, it is not considered new evidence and does not meet the requirements of a motion to reopen.

The Petitioner also provides copies of two of our unpublished decisions, which he references in his legal brief. First and foremost, we note that while 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on USCIS, unpublished decisions are not similarly binding. And even if we were to disregard the non-precedent status of the cited decisions, the Petitioner has not established that the facts in the present matter are analogous to those in the unpublished decisions where we sustained one appeal and remanded the other for further consideration by the Director. We note that the latter decision did not include a first prong analysis under the *Dhanasar* framework, which was the basis for our decision to dismiss the appeal in this matter. And in the matter of the sustained appeal, our decision lists a detailed iteration of the proposed endeavor. Conversely, our decision in this matter states that one key deficiency was that "the Petitioner does not directly state what his future work would involve, other than that he will work in the field of production engineering in the oil and gas industry."

In light of the deficiencies described above, the Petitioner has not provided sufficient evidence to merit a reopening of this matter.

Next, we turn to the Petitioner's motion to reconsider, which 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.

In our prior decision, we determined that the Petitioner did not demonstrate that his endeavor: (1) would broadly impact the oil and gas industry, (2) has significant potential to employ U.S. workers, (3) or that it otherwise offers substantial positive economic effects for our nation. On motion, the Petitioner does not adequately address these deficiencies and instead contests the correctness of our prior decision based on the assertion that we "improperly and incorrectly increased the difficulty of satisfying the 'National Importance' criterion" in opposition to *Dhanasar*, which the Petitioner claims "is easier to satisfy" than the "national in scope" criterion in the now-vacated case of *Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (NYSDOT). The Petitioner further contends that "the AAO must explain, in writing, how and or whether the *Dhanasar* case increased the legal difficulty of satisfying the 'National in Scope/National Importance' criterion." The Petitioner does not, however, cite to any legal authority for these arguments or offer evidence to support the claim that the effect of the *Dhanasar* framework was to "makes it easier" to satisfy NYSDOT's "national in scope" criterion. And although the Petitioner claims to "understand[] that the *Dhanasar* standard is now the rule for NIW cases," his reference to the "National in Scope/National Importance" criterion is inconsistent with that claimed understanding as it indicates that the Petitioner sees these as interchangeable more so than as two distinct standards.

We also note that while *Dhanasar* seeks to "to avoid overemphasis on the geographic breadth of the endeavor," it nevertheless highlights the importance of demonstrating the breadth of an endeavor's implications through key characteristics, such as "national or even global implications" of an endeavor or an endeavor's potential for "substantial positive economic effects, particularly in an economically depressed area." *Matter of Dhanasar*, 26 I&N Dec. at 884-85. As determined in our prior decision, the Petitioner did not establish that his proposed endeavor possesses these characteristics. Nor has the Petitioner established on motion that we incorrectly applied these characteristics to the facts and evidence presented on appeal.

Lastly, we decline to grant with the Petitioner's request that we conduct an analysis under the second prong of the *Dhanasar* framework. Because we have concluded that the Petitioner has not established that our prior decision was based on an incorrect application of law or policy when the decision was issued, he continues to be ineligible for a national interest waiver under the first prong of the *Dhanasar* framework. We therefore do not need to reach a determination as to whether he meets the remainder of the second and third prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *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).

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established 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 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.