U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21635145

Date: AUG. 12, 2022

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner 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).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but that he 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 the subsequent appeal, concluding that the Petitioner did not establish that he is well positioned to advance the proposed endeavor under the second prong of the analytical framework described in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] The matter is before us again on a combined motion to reopen and motion to reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the combined motions.

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). Accordingly, we examine any new facts and arguments to the extent that they pertain to our prior dismissal of the Petitioner's appeal.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Resubmitting previously provided evidence or reasserting previously stated facts do not meet the requirements of a motion to reopen. The new facts must also be relevant to the grounds of the unfavorable decision. A motion to reconsider must establish that our decision was based on an

[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national 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.

incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceeding at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The Petitioner's proposed endeavor, as initially described, was as a medical scientist focusing on medical research. However, the Petitioner, a physician, did not establish that he has any experience in this area and, thus, did not demonstrate that he is well positioned to advance the proposed endeavor. While we acknowledged that the Petitioner changed his proposed endeavor in response to the Director's request for evidence (RFE), as we explained:

> The second version of the proposed endeavor was not part of the initial filing. The Petitioner must meet eligibility requirements at the time of filing. 8 C.F.R. § 103.2(b)(1). Furthermore, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). Here, the substitution of the Petitioner's proposed endeavor was not merely a minor revision to add clarity or detail. Rather, it represents a major material change, from one occupation (medical researcher) to another (physician).

We also noted that the Petitioner did not provide any explanation for this change.

On motion, rather than address the above or provide new facts supported by documentary evidence, the Petitioner only makes general claims, such as "the Service"[2] applied an incorrect "standard of proof" when reviewing the RFE response and reasserts that he has established that he meets the second prong of the *Dhanasar* analysis. Without more, the Petitioner has not met the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2).

Similarly, beyond the general statement that "the Service denial of this petition was contrary to law or policy," the Petitioner has not provided probative reasons establishing that our prior decision, the dismissal of the appeal, was based on an incorrect application of law or policy. A moving party must specify the factual and legal issues that were decided in error or overlooked in the decision or must show how a change in law materially affects the prior decision. *Matter of O-S-G*, 24 I&N Dec. 56, 60 (BIA 2006). Therefore, the submission does not meet the requirements of a motion to reconsider at 8 C.F.R. § 103.5(a)(3).

In light of the above, the Petitioner has not shown proper cause for reopening or reconsideration of our prior decision, nor established eligibility for the benefit sought.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[2] It is unclear whether the Petitioner is referencing the Director's decision or our dismissal of his appeal. As previously explained, per 8 C.F.R. § 103.5(a)(1)(i), the scope of this motion is limited to our prior decision.