U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23671782

Date: DEC. 28, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, a business management consultant, seeks second preference immigrant classification as an individual of exceptional ability in the sciences, arts or business, 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. We dismissed the subsequent appeal and motion to reconsider. The matter is now before us on a second motion to reconsider. The Petitioner continues to assert that he is eligible for a national interest waiver and that we erred in our analysis.

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 motion to reconsider.

I. LAW

A motion to reconsider must (1) state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish 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).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reconsider to instances where the petitioner has shown "proper cause" for that action. To merit reconsideration, a petitioner must not only meet the formal filing requirements but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. See 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

As a preliminary matter, we note that by regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). The issue before us is whether the Petitioner has established that our decision to dismiss the prior motion to reconsider was incorrect based on the evidence and was

based on an incorrect application of law or USCIS policy. We incorporate our prior decisions by reference and will repeat only certain facts and evidence as necessary to address the Applicant's claims on motion.

The filing before us does not entitle the Petitioner to a reconsideration of the denial of the petition. Rather, a motion to reconsider pertains to our most recent decision. In other words, we examine any new arguments to the extent that they pertain to our dismissal of the Petitioner's prior motion to reconsider. Therefore, we cannot consider new objections to earlier denials, and the Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding.[1]

On motion, the Petitioner asserts that we applied the wrong standard of proof; however, our prior decision already discussed the Petitioner's arguments concerning the preponderance of the evidence standard. As we explained:

> A petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. Id. In other words, a petitioner must show that what it claims is "more likely than not" or "probably" true. To determine whether a petitioner has met his burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. Id. at 376; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989). The Petitioner generally states that the endeavor will involve an unspecified amount of trade between the United States and Brazil and that the Petitioner's clients will generally "expand their revenues through export." These statements do not provide sufficient details about the endeavor, the clients, the nature of their business, the level of revenue expansion, and other relevant, probative, and credible information that could establish that it is more likely than not that the results would create substantial positive economic effects or other broader implications that rise to the level of national importance, as contemplated by Dhanasar. 26 I&N Dec. at 889-90.

Despite this analysis, the Petitioner continues to argue that we applied a higher and stricter standard of proof than a preponderance of the evidence. The Petitioner states that because the endeavor is proposed in nature, it is impossible to provide specific numbers, or, in the present case, a specific

[1] Our prior decision acknowledged the Petitioner's arguments concerning the proposed endeavor's impact but noted that the Petitioner did "not elaborate on how our decision may have improperly limited our evaluation of the proposed endeavor solely in geographic terms." In the present motion, the Petitioner clarifies that he "did not specifically state that [our appellate] decision improperly limited the AAO's evaluation of the proposed endeavor solely in geographic terms." Instead, the Petitioner suggests the Director improperly limited the evaluation of the proposed endeavor to geographic terms. In support, the Petitioner quotes the Director's decision, which states in pertinent part that "the petitioner has not demonstrated that the economic implications of these operations would extend beyond the city of [redacted] or the state of Utah." Based upon the Petitioner's clarification on motion, it does not appear as though the Petitioner intended his prior motion to allege that we erred in evaluating his proposed endeavor solely in geographic terms, but rather, that the Director erred in this regard. Similarly, the Petitioner asserts that the Director erred when noting that the Petitioner filed documents of incorporation for his company only after the filing of the initial petition. The Petitioner counters that he is not prevented from providing new evidence to corroborate the notion that he continues to move forward towards his proposed endeavor and is taking steps to reach his goals. Although we acknowledge these statements, the Petitioner does not explain how they constitute an error in our prior decision. As explained, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). Therefore, we need not address arguments that do not pertain to our prior decision.

amount of trade between the United States and Brazil[.]" However, our prior decision reflects neither a request nor a requirement for specific numbers or amounts of trade, nor a demonstration that the proposed endeavor will succeed. Rather, our decision noted that the Petitioner did not provide sufficient details or other relevant, probative, and credible information to support his assertions concerning the economic effects or broader implications of his proposed endeavor. It remains the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Skirball Cultural Ctr., 25 I&N Dec. 799, 806 (AAO 2012).

Our appellate decision reflects a consideration of the Petitioner's evidence and arguments in support of the proposed endeavor's economic impact, including evidence he provided in response to the request for evidence (RFE). That decision also referenced the letter from the Petitioner's claimed "expert in [e]conomics and [b]usiness showing the significant potential to employ U.S. workers." We again addressed these arguments in our decision dismissing the Petitioner's first motion. Nevertheless, the Petitioner repeats that the "the required potential is to employ U.S. workers, which is not the same as potential to employ a significant number of U.S. workers, as the 'significance' is in the 'potential' or 'probability,' not in the 'number of jobs' the endeavor may create." While the Petitioner may not agree with our prior analysis addressing this claim, he has not established how it was incorrect or how it contained an incorrect application of law or policy.

III. CONCLUSION

For the foregoing reasons, the Petitioner has not shown that our prior decision contained errors of law or policy, or that the decision was incorrect based on the record at the time of that decision. Therefore, the motion does not meet the requirements of a motion to reconsider, and it must be dismissed.[2]

ORDER: The motion to reconsider is dismissed.

[2] We again reserve our opinion regarding whether the record satisfies the second or third Dhanasar prong.