U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20612902

Date: JUL. 21, 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 mechanical and aerospace engineer, 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 employment-based, "EB-2" immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. 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 Nebraska Service Center denied the petition, determining that while the Petitioner qualifies for classification as a member of the professions holding an advanced degree, 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 though the record shows that the proposed endeavor would have substantial merit and national importance, the Petitioner did not establish he is well-positioned to advance the endeavor.[1] We reserved our opinion on whether the record establishes that, on balance, it would be beneficial for the United States to waive the requirements of a job offer and thus of a labor certification.

The matter is now before us again on a combined motion to reconsider and motion to reopen. 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; *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Moreover, motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *See INS v. Abudu*, 485 U.S. at 110. Upon review, we will dismiss the combined motions.

[1] For the sake of brevity, we incorporate our previous decision in this matter, ID# 18468283 (AAO SEP. 28, 2021).

I. MOTION TO RECONSIDER

A motion to reconsider must establish that our previous 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 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 record indicates that the Petitioner's proposed endeavor centers on his intention to continue working in the field of mechanical and aerospace engineering in the United States with a specific focus on computational fluid dynamics (CFD). He explains that CFD is a brand of fluid mechanics that uses numerical analysis and data structures to analyze and solve problems that involve fluid flows and maintains that his work will provide greater information and further understanding in the field of CFD by promoting multi-disciplinary interactions and applications of various methods and technologies based on CFD research.

In our previous decision, we concluded that the record lacked sufficient evidence to demonstrate that the Petitioner is well positioned to advance his proposed research endeavor, to establish his eligibility for a national interest waiver under the second prong of the analytical framework set forth in the precedent decision, *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[2] After carefully considering the entire record of proceeding, we determined that though the record demonstrates the Petitioner conducted, published, and presented research during his graduate studies and in his professional career, he has not shown that this work renders him well positioned to advance his proposed CFD research.

We also recognized that while research adds information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his proposed endeavor. We examined the factors set forth in *Dhanasar* to determine whether, for instance, the Petitioner's progress towards achieving the goals of the proposed research, his record of success in similar efforts, or the generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, did not adequately demonstrate that his published and presented work in the area of CFD has served as an impetus for progress in the aerospace engineering field or that it has generated substantial positive discourse in the aerodynamics industry. We also concluded that the evidence does not otherwise show that his work constitutes a record of success or progress in advancing research relating to CFD applications.

On motion, the Petitioner submits a brief that is fundamentally identical to his appellate brief. In the current brief, he reiterates assertions previously proffered on appeal that his education, research experience in aerospace engineering, published articles, and recommendation letters from others in the field demonstrate that he is well positioned to advance his proposed endeavor. He contends that we gave insufficient individual and collective weight to the evidence provided. Like the appeal brief,

[2] *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. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

the motion brief discusses the Petitioner's endeavor, highlighting that the Petitioner's endeavor encompasses several facets, including his development of a "novel turbine concept," and points to "other components of his work as a doctoral researcher includ[ing] the development of numerical methods and CFD."

Importantly, on motion the Applicant makes the same or similar arguments as the appeal brief about the significance of the submitted evidence without sufficiently addressing our analysis of the evidence in dismissing his appeal. For instance, within the appeal brief and on motion the Petitioner references letters from Dr. A- and Dr. M- as evidence that "the technologies developed by [the Petitioner] are notably used by S- with its latest [redacted] turbines." On appeal and now on motion the Petitioner points to brochures and articles that discuss the significance of S-'s [redacted] turbines. The Petitioner emphasizes that the articles and brochures "show the worldwide commercialization of the [redacted] turbines," but this material does not identify or discuss the specific "technologies" that were developed by the Petitioner as part of his project work as a contractor with S-.

Similarly, regarding his work with A-, the Petitioner again references a letter from Mr. S- who indicates that that the Petitioner's "solution has been incorporated into all new [redacted] designs at [A-] to eliminate the [redacted] issue." He avers on motion that his work "was [the] impetus for [redacted] systems in the U.S., South Korea, and Italy," but absent corroborative supporting evidence, the record does not substantiate the significance of the Petitioner's work with A-.

In discussing this evidence in our prior decision, we explained, among other things, that while it appears that the Petitioner's prior research has proved beneficial to the companies who have utilized his services, the writers of the recommendation letters submitted in support of the petition did not provide adequate context of the significance of the Petitioner's solutions or techniques to show that through his work he has affected the aerospace or aerodynamics industry, served as an impetus for progress or generated positive discourse in his field, or that his work otherwise represents a record of success or progress rendering him well positioned to advance his proposed endeavor. It is the Petitioner's burden to prove by a preponderance of evidence that it is qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* On motion, the Petitioner contests our conclusions in this regard, but he does not specifically explain how our determinations were based on an incorrect application of law or policy.

The Petitioner also alleges on motion that we "did not properly assess all factors delineated in the *Dhanasar* precedent" in our previous decision, indicating that we should have individually and collectively considered various case elements, such as the Petitioner's education, skills and knowledge, record of success, model of plan or future activities, progress towards achieving the proposed endeavor, and the interest of others in the field in his accomplishments, in order to determine whether he has met the second *Dhanasar* prong. However, we did analyze these aspects in our *de novo* review of the evidence of record on appeal and discussed them within our appellate decision.

On motion, the Petitioner indicates that he disagrees with our previous assessment of the evidence submitted in support of the petition. However, without showing that we erred as a matter of law or pointing to policy that contradicts our analysis of the evidence, disagreeing with our conclusions is

not a ground to reconsider our decision. *Cf. Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006).[3] ("[A] motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior . . . . decision. The moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in our initial decision . . . .") Here, the Petitioner has not provided probative reasons establishing that our prior decision was based on an incorrect application of law or policy, nor has it otherwise shown proper cause to reconsider the previous decision. Accordingly, we will dismiss the motion to reconsider.

II. MOTION TO REOPEN

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 that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

In support of his motion to reopen, the Petitioner offers an October 2021 letter of reference from Y-, an associate professor at N- University. The Petitioner reiterates information in his motion brief that he previously provided in his response to the Director's request for evidence (RFE), and on appeal; pointing out again that Y- has cited to his 2013 article, [redacted] [*turbine article*], in four of his own scientific articles.

In our previous decision, we acknowledged that the Petitioner submitted information from Google Scholar indicating that he has published five articles, two of which garnered ten and two citations, respectively. We also observed that the Petitioner did not offer comparative statistics showing the significance of this level of citation within his field. Ultimately, we concluded that the Petitioner did not show that the number of citations received by his published articles (which included Y-'s four citations of the *turbine article*) reflected a level of interest in his work from relevant parties sufficient to meet *Dhanasar*'s second prong. Therefore, the presentation of documentation indicating that Y- has cited to the Petitioner's research within his own research articles is not, in itself, a new fact by which the Petitioner can meet the requirements of a motion to reopen. 8 C.F.R. § 103.5(a)(2).

Nonetheless, according to Y-'s letter, the Petitioner contacted Y- "to obtain a letter of recommendation to support [his] petition." Y- explained that one of his areas of research interest is [redacted] He notes that the Petitioner's *turbine article* provides:

> [A] novel way to increase the performance of the [redacted] wind turbines. His method redesigned the blade [redacted] as is now

[3] *O-S-G-* relates to motions to reconsider before the Board of Immigration Appeals (the Board), governed by 8 C.F.R. § 1003.2(b)(1), which states: "A motion to reconsider shall state the reasons for the motion by specifying the errors of fact or law in the prior Board decision and shall be supported by pertinent authority." These requirements are fundamentally similar to those found at 8 C.F.R. § 103.5(a)(3), and therefore the same logic applies.

> customary in aviation, allowing for reduced drag and increased lift, thus better wind turbine performance. His work has been our go-to reference in this matter.

Notably, the Petitioner has not provided copies of Y-'s research articles to illustrate the level of Y-'s reliance on the Petitioner's work therein. While Y- postulates that the Petitioner's "design approach gives us a *unique possibility* to significantly reduce [redacted] he does not describe the current practical application of the Petitioner's 2013 methodology in ongoing wind turbine development initiatives, nor does he comment on the interest of other researchers and wind-turbine developers in the Petitioner's work. Further, Y- alludes to the significance of the Petitioner's work within his own research, but he does explain how he has or will specifically incorporate the Petitioner's research findings therein. Without more, Y-'s commentary about the Petitioner's work in his 2021 letter (when collectively considered along with the previously submitted evidence), does not adequately demonstrate that the Petitioner is well positioned to advance his proposed research endeavor. Accordingly, we will dismiss the motion to reopen.

As the Petitioner has not met the requirements of the combined motions, we affirm our prior conclusion that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver. We again reserve our opinion regarding whether the record satisfies the third *Dhanasar* prong. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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).

III. CONCLUSION

For the reasons discussed, the Petitioner's motion to reconsider has not shown that our previous decision was based on an incorrect application of law or USCIS policy, and the evidence provided in support of the motion to reopen does not overcome the grounds underlying our previous decision. The combined motions will be dismissed for the above stated reasons.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.