U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20813560

Date: MAY 31, 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 chemical 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).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies as a member of the professions holding an advanced degree or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed a subsequent appeal, concluding that the Petitioner had not established that the proposed endeavor has substantial merit or national importance, and reserved other eligibility criteria issues. We also affirmed the Director's determination that the Petitioner did not qualify as a member of the professions holding an advanced degree. 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 motion.

I. MOTION REQUIREMENTS

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

In our prior decision, we found that the Petitioner did not demonstrate that he qualified as an advanced degree professional. Although we noted in our decision that the Petitioner's failure to establish eligibility for this underlying immigrant classification rendered the issue of the national interest waiver

moot, we provided further analysis using the *Dhanasar* framework since the Director made additional eligibility findings and the Petitioner alleged error in the Director's decision. Upon review, we concurred with the Director's determination that the record did not satisfy both aspects of the first *Dhanasar* prong, specifically that the proposed endeavor has both substantial merit and national importance. We concluded that because the documentation in the record did not establish that the Petitioner met the requirements of the underlying classification, and because the it did not establish that the Petitioner's proposed endeavor is of substantial merit or national importance, we declined to further analyze his eligibility under the second and third prongs outlined in *Dhanasar* as it would serve no meaningful purpose.[1] We incorporate our prior decision dismissing the Petitioner's appeal here by reference.

On combined motion, the Petitioner reasserts that he qualifies as an advanced degree professional and that his proposed endeavor has national importance, and concludes that he has demonstrated that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner does not address our determination that his proposed endeavor lacks substantial merit. Therefore, we deem this issue to be waived and will not address this aspect of *Dhanasar's* first prong in our decision. *See, e.g.*, *Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

We address the combined motion separately below.

A. Motion to Reopen

The Petitioner asserts that he qualifies as an advanced degree professional under 8 C.F.R. § 204.5(k)(3)(i)(B) based on his foreign equivalent degree and minimum of five years of progressive post-baccalaureate experience. In our prior decision, we determined that the record did not persuasively establish that the Petitioner is a member of the professions with an advanced degree due to evidentiary deficiencies in both his academic credentials and experience letters. Upon review of the evidence submitted on motion, including industry reports and a news article from *The Washington Post*, the Petitioner has not overcome this conclusion.

As discussed in our prior decision, we determined that the Petitioner's diploma from the University [redacted] demonstrating that he earned an undergraduate degree in chemical engineering, was not accompanied by a transcript and therefore the diploma alone could not substantiate the duration or course content of his studies. We further noted that the evaluation of the Petitioner's foreign education and work experience from the Trustforte Corporation did not provide a sufficient basis for the conclusion that the Petitioner's foreign degree is the equivalent of a U.S. bachelor's degree, as the evaluator did not explain how the Petitioner's course work and academic hours actually compare to a U.S. education. We further noted that the evaluation contained numerous unresolved discrepancies and referenced information not contained in the record. Regarding the Petitioner's progressive post-baccalaureate experience, we concluded that while the letters submitted demonstrated the Petitioner's continuous work in the specialty, they were insufficient to demonstrate that such work was actually progressive.

[1] *See Matter of Dhanasar*, 26 I&N Dec. 884, 888-91 (AAO 2016), for elaboration on these three prongs.

On motion, the Petitioner submits printouts from www.statistica.com and www.universityguru.com demonstrating that the University [redacted] the institution where the Petitioner earned his undergraduate degree, is the [redacted] ranked university in Venezuela. The Petitioner argues that we erred by discounting his degree from this high-ranking university, and states that this documentation, combined with the documentation previously submitted regarding his experience in the field, establishes his eligibility under this immigrant classification.[2]

We specifically concluded in our prior decision that the deficiencies in the Trustforte evaluation, combined with the Petitioner's failure to provide a transcript indicating the course work and academic hours completed, precluded a determination that the Petitioner's foreign degree was equivalent to a U.S. bachelor's degree. While we acknowledge the Petitioner's submission of statistical data regarding the conferring institution, the evidence presented on motion does not establish that the Petitioner has resolved the evidentiary deficiencies previously noted. As explained in our previous decision, because the record does not include a transcript, and because the Trustforte evaluation did not adequately explain its conclusion that the Petitioner's foreign diploma is equivalent to a United States degree as required under 8 C.F.R. § 204.5(k)(3)(i)(A), it is insufficient to establish the Petitioner's eligibility as a member of the professions holding an advanced degree. Accordingly, while the Petitioner has offered new evidence, this documentation does not demonstrate new facts showing that he qualifies as an advanced degree professional under 8 C.F.R. § 204.5(k)(3)(i)(B).[3]

For the reasons discussed above, we will dismiss the motion to reopen.

B. Motion to Reconsider

The Petitioner first contends on motion that we did not properly weigh the experience letters submitted in support of his qualification as an advanced degree professional. Specifically, the Petitioner asserts that we incorrectly applied the regulation at 8 C.F.R. § 204.5(g)(1) in our prior decision by erroneously requiring that the experience letters be exclusively from employers.

Our decision, however, did not indicate or imply that we would only accept employer letters as evidence of the Petitioner's progressive post-baccalaureate experience. We acknowledged the Petitioner's submission of numerous letters from supervisors and colleagues within [redacted] the Petitioner's current and longstanding employer, but noted that while these letters described the Petitioner's work and his various position titles throughout the years, the letters did not establish how the Petitioner's work was progressive in nature. We further noted that although the colleagues and supervisors may have been familiar with the Petitioner's role and experience while he worked directly alongside them, they were less persuasive than letters from representatives authorized to make assertions concerning the duration and nature of the Petitioner's official employment history with [redacted] We determined that the Petitioner had not established that he had at least five years of

[2] The Petitioner also submits documentation pertaining to the academic standing of an unrelated individual and national ranking of an unrelated university as a means of comparison. Although we acknowledge the submission of these documents, they are unrelated to the issue before us on motion and do not constitute new facts that overcome the ground underlying our previous decision.

[3] The Petitioner does not offer new facts or evidence relevant to our aforementioned findings that the experience letters were insufficient to establish eligibility under this criterion, nor does he offer new facts or evidence in support of the substantial merit and national importance of his proposed endeavor.

progressive post-baccalaureate experience in the specialty because none of the letters provided analysis as to how the Petitioner's work experience and training represented progressively responsible work, not because they were not exclusively from employers.

The Petitioner's arguments do not establish that we erred in concluding that he did not qualify as an advanced degree professional under 8 C.F.R. § 204.5(k)(3)(i)(B). The experience letters in the record lack specific descriptions of the duties performed by the Petitioner or of the training he received, and therefore do not offer sufficient information to demonstrate that he has at least five years of progressive post-baccalaureate experience in chemical engineering to constitute the equivalent to an advanced degree in that specialty.

We now turn to the Petitioner's assertions on motion that we erred in our determination that he did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner claims that he will continue working in the field of chemical engineering in the Oil & Gas Sector for his current employer[redacted] In our prior decision, we noted that the Petitioner did not directly state what his future work would involve, and that the record contained little direct evidence of the Petitioner's proposed endeavor. We concluded that the Petitioner did not establish that the proposed endeavor has both substantial merit and national importance, as required by the first *Dhanasar* prong, and reserved our opinion regarding whether the record satisfies the remaining *Dhanasar* prongs.

The Petitioner argues on motion that we did not properly analyze his case in comparison to the standard set by *Dhanasar*. The Petitioner asserts that we are legally required to compare the impact of his work with that of Dr. Dhanasar and cites to the concept of precedent decisions in support of this assertion.

While we agree that *Dhanasar* is a precedent decision and further acknowledge the concept of precedent decisions and their controlling nature, we reiterate our previous observation that the Petitioner cited no legal authority for a one-to-one comparison of two petitioners operating in different fields with different proposed endeavors. *Dhanasar* establishes an analytical framework to examine national interest waiver cases, but it does not mandate, or even suggest, that a side-by-side comparison of individual petitioners and endeavors is required. We emphasize again that the Petitioner misunderstands the nature of precedent decisions when he asserts that approvals are required for any petitioner with more impact than Dr. Dhanasar.

Additionally, the Petitioner's motion to reconsider does not assert that we erred in our determination that his proposed endeavor lacked national importance. Regarding national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. As noted in our prior decision, the Petitioner must demonstrate the national importance of continuing to serve in his role for an employer in the oil and gas industry, rather than the national importance of the industry overall. In *Dhanasar*, we noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* In our prior decision, we determined that the Petitioner did not explain what specific benefits his proposed endeavor will add, nor did he explain what "advances" his proposed endeavor will make in the industry. We concluded that while the record contained evidence of reports he authored, testing he performed, and studies he facilitated, there was little indication that these documents were disseminated to anyone outside his employer or his employer's own projects.

The Petitioner's motion to reconsider does not assert error in our determination that the record is insufficient to demonstrate the prospective broader implications of his endeavor, and does not articulate how we incorrectly applied the law or USCIS policy in reaching that conclusion, as required by 8 C.F.R. § 103.5(a)(3). In fact, the Petitioner acknowledges that its arguments set forth in clauses 19-24 of the motion "are exactly the same arguments presented in the original Form I-290B for this case," with no substantive discussion of our decision dismissing that appeal or how we incorrectly applied the law when considering those same arguments previously.

The Petitioner's arguments on motion do not establish that we erred in concluding that he had not satisfied the "national importance" requirement of *Dhanasar*'s first prong.[4] Moreover, the Petitioner does not address or contest our determination that he did not establish that the proposed endeavor has substantial merit. The Petitioner therefore has not met the requirements for a motion to reconsider as he has not shown that we erred in our previous decision based on the record before us on appeal. In addition, the motion to reconsider does not establish that our dismissal of his appeal was based on an incorrect application of law, regulation, or USCIS policy.

III. CONCLUSION

The Petitioner has not established new facts relevant to our decision that would warrant reopening of the proceedings, nor has he shown that we erred as a matter of law or USCIS policy in dismissing his appeal. Consequently, we have no basis for reopening or reconsideration of our prior decision. The Petitioner's appeal therefore remains dismissed, and his underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[4] Because the Petitioner has not satisfied the first *Dhanasar* prong on motion, we need not address whether he has satisfied the second and third *Dhanasar* prongs. *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).