U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23349402

Date: NOV. 04, 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 recruitment consultant in the oil and gas sector, 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 Texas Service Center denied the petition and we dismissed the Petitioner's subsequent appeal, concluding that the Petitioner had not established the national importance of the proposed endeavor. The matter is now before us on a motion to reconsider. The Petitioner continues to assert that he is eligible for a national interest waiver and submits additional evidence in support of his claims.

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 initial decision. 8 C.F.R. § 103.5(a)(3). A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the applicant has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, an applicant must not only meet the formal filing requirements (such as submission of a properly completed Form I 290B, Notice of Appeal or Motion, with the correct fee), 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

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 submitted new facts to warrant reopening or has established that our decision to dismiss the prior appeal was based on an incorrect application of law or USCIS policy. We therefore incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion.[1]

As a preliminary matter, we note that the Petitioner filed a motion to reconsider but does allege that we based our prior decision on an incorrect application of law or USCIS policy. Rather, the Petitioner submits two memoranda concerning presidential actions to address the nation's oil and gas supply and requests that we consider our decision in light of this additional evidence. Accordingly, we conclude that the Petitioner mistakenly filed a motion to reconsider when he intended to file a motion to reopen. Therefore, we will consider his motion to reconsider as a motion to reopen and adjudicate it upon its merits, rather than summarily dismissing the motion to reconsider.

As the Petitioner's intent appears to have been to file a motion to reopen, we provide the following background on motions to reopen. In general, motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. INS v. Doherty, 502 U.S. 314, 323, (1992) (citing INS v. Abudu, 485 U.S. 94, 108 (1988)); see also Selimi v. Ashcroft, 360 F.3d 736, 739 (7th Cir. 2004). There is a strong public interest in bringing proceedings to a close as promptly as is consistent with giving both parties a fair opportunity to develop and present their respective cases. INS v. Abudu, 485 at 107.

Based on its discretion, USCIS "has some latitude in deciding when to reopen a case" and "should have the right to be restrictive." Id. at 108. Granting motions too freely could permit endless delay when foreign nationals continuously produce new facts to establish eligibility, which could result in needlessly wasting time attending to filing requests. See generally INS v. Abudu, 485 U.S. at 108. The new facts must possess such significance that, "if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case." Matter of Coelho, 20 I&N Dec. 464, 473 (BIA 1992); see also Maatougui v. Holder, 738 F.3d 1230, 1239–40 (10th Cir. 2013). Therefore, a party seeking to reopen a proceeding bears a "heavy burden." INS v. Abudu, 485 at 110. With the current motion, the Petitioner has not met that burden.

On motion, the Petitioner provided copies of two March 2022 presidential actions encapsulated in: (1) a "Memorandum on the Finding that a Drawdown and Sale of Petroleum from the Strategic Petroleum Reserve is Required by U.S. Obligations Under the International Energy Program Implemented by the International Energy Agency;" and (2) a "Memorandum of Finding of Severe Energy Supply Interruption."

The Petitioner requests that we consider these presidential actions in the context of the national importance portion of the first Dhanasar prong. He argues that petroleum shortages, increased fuel prices, and the use of petroleum reserves to address supply interruptions support a finding that his proposed endeavor of working as a recruitment consultant specialized in the oil and gas sectors in Europe, the

[1] On motion, the Petitioner requests that we discuss each piece of evidence in the record. While we acknowledge this request, as explained, the scope of review on motion is limited to the prior decision.

Middle East, Africa, and North America is of national importance. Based on this additional evidence, the Petitioner further requests that we revise our prior conclusion that he "did not provide documentary evidence indicating his recruitment consulting activities would impact the oil and gas industry or the Petitioner's recruitment consultant field more broadly . . . ."

We have reviewed the memoranda and agree that the field in which the Petitioner proposes to work is indeed important. Nevertheless, the memoranda do not address the Petitioner's proposed endeavor activities, their importance, or their impact. Rather, the evidence on motion reinforces the conclusion that the oil and gas industry is the subject of federal government interest, and that the industry is important. However, this is insufficient in itself to establish the national importance of the proposed endeavor. As we explained in our prior decision, in determining national importance, the relevant question is not the importance of the field or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." See Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016). We acknowledge that the federal government has an interest in ensuring the stability of the nation's petroleum, but this does not establish the impact of the Petitioner's specific proposed endeavor activities. Therefore, we conclude that the additional evidence on motion does not establish that the Petitioner's recruitment consulting activities would impact the oil and gas industry or the recruitment consulting field more broadly in a manner commensurate with national importance.

Accordingly, the Petitioner has not shown proper cause for reopening the proceedings.

III. CONCLUSION

For the reasons discussed, the evidence provided in support of his motion does not overcome the grounds underlying our prior decision, nor has the Petitioner shown that our prior decision was based on an incorrect application of law or USCIS policy. Therefore, the Petitioner's motion will be dismissed for the above stated reasons.

ORDER: The motion is dismissed.