U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20813791

Date: OCT. 05, 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 maintenance, assembly, and renovation engineer, 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, concluding that although the Petitioner qualifies for the underlying EB-2 classification, he had not established the national importance of the proposed endeavor, that he is well positioned to carry out the endeavor, or 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 had not overcome the Director's findings. The matter is now before us on combined motions to reopen and reconsider. The Petitioner continues to assert he is eligible for a national interest waiver and that we erred in our decision.

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 to reopen and reconsider.

I. LAW

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

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

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 submitted new facts to warrant reopening or has established that our decision to dismiss the prior combined motion 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.

Throughout his brief on motion, the Petitioner repeatedly states that the "NSC" erred. We assume that this abbreviation refers to the "Nebraska Service Center." However, as explained above, a motion is limited to the prior decision, which is our dismissal of the Petitioner's appeal, not the Nebraska Service Center's denial of the petition. On motion, the Petitioner does not allege that the AAO erred in the prior decision. Nevertheless, we consider the Petitioner's arguments that the NSC erred only insofar as they may pertain to our prior dismissal of the Petitioner's appeal. While we may not address each piece of evidence individually, we have reviewed and considered each one.

A. Motion to Reconsider

As stated, 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. Therefore, we cannot consider new objections to the earlier denial, and the Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding.

The Petitioner alleges that the NSC (AAO) erroneously applied the law, inappropriately reviewed evidence, applied a higher and stricter standard of proof, as well as abused its discretion in not considering precedent decisions. In addition, the Petitioner asserts that the evidence he provided establishes his eligibility for a national interest waiver. The Petitioner argues that he has shown the impact of the proposed endeavor extends beyond his company, partnerships, and clients. He also argues that the proposed endeavor has national implications, has a significant potential to employ U.S. workers, and offers substantial positive economic effects. In support of his arguments, he references his business plan, an advisory opinion from [redacted] the benefits of industrial and maintenance engineering, the services he will provide through his engineering business, and his qualifications. We briefly discuss this evidence and explain why it does not sufficiently support a finding that his proposed endeavor has national importance.

First, we conclude that the Petitioner heavily relies upon his personal and professional qualifications to establish the national importance of his proposed endeavor. As we explained in our prior decision, this is insufficient to establish the national importance of his proposed endeavor. Specifically, we noted that the Petitioner's knowledge, skills, and experience in his field relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." See Matter of Dhanasar, 26 I&N Dec. 884, 890 (AAO 2016)

Further, the Petitioner repeatedly emphasizes the importance of the field in which he will work. 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 id. at 889. Our prior decision reflects that we considered the Petitioner's arguments and evidence concerning the importance of the field, but nevertheless determined that the Petitioner's evidence had not sufficiently shown that the impact of the proposed endeavor extends beyond his company, partnerships, and clients to impact his field or the industry more broadly at a level commensurate with national importance.

The Petitioner references his level of investment in his company, [redacted] and the impact he expects his proposed endeavor will create. Our prior decision reflects specific consideration of the Petitioner's business plan, particularly the revenue and job creation projections. The Petitioner explains that he used market analysis to calculate these figures. However, overall industry trends and statistics do not sufficiently account for the specific staffing, payroll, and revenue figures the Petitioner provided for his proposed endeavor. The projections suggest that the Petitioner aspires to achieve particular goals for his company; however, the actual figures appear to be little more than conjecture. As we noted in our prior decision, the Petitioner anticipates employing seven people by the year 2020 and fourteen people from years 2021 to 2024. However, the Petitioner has not explained how this represents a significant potential to employ U.S. workers such that we can conclude that his proposed endeavor has national importance. We also mentioned the Petitioner's anticipated revenue and payroll expenses; however, as noted in our prior decision, it is unclear how the Petitioner calculated these projections. While we acknowledge market analysis of the industry, which includes growth forecasts, we cannot conclude that this sufficiently substantiates the Petitioner's claimed projections. The Petitioner must support his assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010). Moreover, not all business activity stands to impact the economy on a level commensurate with national importance. Therefore, even if the Petitioner had sufficiently substantiated his claimed projections, he would still need to explain how these revenue and payroll figures signify the national importance of the proposed endeavor.

The Petitioner repeatedly relies upon his business plan, which emphasizes the value and merit of the Petitioner's services and qualifications. However, this does not sufficiently establish the national importance of the proposed endeavor. For instance, the benefit of the Petitioner's services appears to be contingent upon other entities hiring him for his services, which does not suggest that the proposed endeavor will have an impact rising to the level national importance. Further, the Petitioner mentions in his business plan that he intends to teach and train others, thereby professionally developing and assisting others in the field. However, these activities appear to impact the individuals whom he teaches and trains, not the field as a whole. As we noted in our prior decision, we determined that Dr. Dhanasar's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. Dhanasar, 26 I&N Dec. at 893. Likewise, we also conclude that the Petitioner's teaching and training of his employees does not sufficiently support a finding that his proposed endeavor would impact the field.

The Petitioner provided an advisory opinion letter from [redacted], a professor in the manufacturing and engineering department of [redacted] University. The opinion letter discussed the Petitioner's eligibility for a national interest waiver. Regarding the national importance of the proposed endeavor, [redacted] discussed the importance of industrial and manufacturing

maintenance to the economy and the talent shortfalls in science, technology, engineering, and mathematics (STEM) fields. However, [redacted] has conflated the importance of STEM and the Petitioner's field in general with the importance of the specific proposed endeavor.

[redacted] also discussed the benefits of the services the Petitioner offers through [redacted] While we agree that the Petitioner's services are beneficial and have merit, this does not sufficiently establish how the benefits of such services extend beyond his company, partnerships, and clientele to impact his field or the industry more broadly at a level commensurate with national importance. Although [redacted] referenced that as a result of the Petitioner's repair and maintenance services, the Petitioner will enable other companies and industries to be more productive, [redacted] did not offer sufficient analysis or detail to establish how this impact extends beyond the Petitioner's company, partnerships, and clientele. Finally, [redacted] turned to the Petitioner's qualifications and expertise to establish the national importance of the proposed endeavor. However, as explained, the Petitioner's qualifications to carry out his proposed endeavor do not establish the national importance of the proposed endeavor.

As a matter of discretion, we may use opinion statements submitted for the Petitioner as advisory. *Matter of Caron Int'l, I*nc., 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. Id. We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. Id. Here, [redacted] largely supported his opinion by focusing on factors that do not bear upon the national importance of the specific proposed endeavor. Therefore, his opinion does not sufficiently support a finding that the proposed endeavor extends beyond the Petitioner's company, partnerships, and clientele to impact the field or the industry more broadly at a level commensurate with national importance.

Our prior decision reflected a consideration of the reference materials concerning industrial maintenance and talent shortages, the President's interest in bolstering education in STEM fields, and the statistics and forecasts in these areas. We concluded that these materials supported the Director's finding that the proposed endeavor has substantial merit. However, the articles and reports address the industry as a whole, rather than the specific proposed endeavor. As these materials do not contain analysis of the Petitioner's specific proposed endeavor, it cannot be concluded that they support a finding that the endeavor has national importance.

Regarding the letters of support from the Petitioner's former colleagues, we conclude that the letters do not support a finding of the Petitioner's eligibility under the first Dhanasar prong. The authors of the letters discussed the results he achieved for his employers and clients and how the Petitioner performed well on various projects in the past. However, the authors did not sufficiently explain how the Petitioner's performance or the results he achieved extended beyond his employer and the specific parties involved to impact the field more broadly. In addition, the authors praised the Petitioner's personal and professional qualifications, which, as explained, pertain to the second prong of the Dhanasar framework. As stated above, we are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of opinion letters is not presumptive evidence of eligibility. Id. at 795. Here, the opinion letters do not

sufficiently discuss the Petitioner's proposed endeavor or explain why it has national importance. Therefore, they are of little probative value in this matter.

The Petitioner generally alleges a failure to consider precedent decisions when dismissing the Petitioner's appeal; however, the Petitioner does not point to any specific precedential decisions that we overlooked. The Petitioner refers to several non-precedent decision concerning petitioners who we found eligible for a national interest waiver. These decisions were not published as precedent and therefore do not bind USCIS officers in future adjudications. See 8 C.F.R. § 103.3(c). We acknowledge the Petitioner's attempts to provide similar evidence to that which the petitioners provided in the referenced non-precedent decisions. However, these previous decisions may be distinguished based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. For instance, in Matter of F-E-, ID# 46885 (AAO Mar. 20, 2017), we determined that the proposed endeavor would affect the mining field more broadly. Similarly, in Matter of T-U-O-A-, ID# 77945 (AAO Dec. 29, 2016), we determined that the impact of that petitioner's work would extend beyond his employer to enable all users to access supercomputing capabilities. Therefore, the specific facts of the individual cases are not analogous to the matter at hand. Unlike the petitioners in the referenced non-precedent decisions, the Petitioner has not adequately established that his proposed endeavor stands to impact his field more broadly or extend beyond his company, partnerships, and clientele.

For the foregoing reasons, the Applicant 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.

B. Motion to Reopen

Initially, we note that 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.

The Petitioner submits a sworn affidavit, evidence of a purchase order from [redacted] for [redacted] services, as well as [redacted] bank statements, evidencing deposits from [redacted] Even if we accept this evidence as credible, it appears to pertain to the Petitioner's commencement of business activities in the United States, which relates more

to whether the Petitioner is well positioned to advance his endeavor under the second prong of the Dhanasar than the national importance of the proposed endeavor under the first prong. Presumably, the Petitioner also presents this evidence in an attempt to address unresolved inconsistencies in the Petitioner's professional declaration and in a letter from [redacted] However, as we thoroughly discussed these inconsistencies in our prior decision, additional evidence regarding them cannot be considered new.

As we explained in our prior decision:

> [T]he Petitioner's professional declaration is dated April 2, 2019, and claims the Petitioner was currently working with [redacted] a Florida cement company, providing automation and environmentally friendly practices regarding industrial oil disposal. However, the letter from [redacted] is dated July 31, 2020, and claims [redacted] was working with [redacted] from "July 31, 2020, up to the present date." Additionally, the letter from [redacted] is not probative evidence as it indicates the Petitioner was contracted to work for [redacted] the same day [redacted] wrote his letter but does not explain how, in that period of time, the Petitioner was able to increase [redacted] sales "exponentially" or reduce factory outages "by 50%" as mentioned in [redacted] letter.

The Petitioner asserts in his sworn affidavit that [redacted] is the same entity as [redacted] While this may be true, the Petitioner has not offered independent and objective evidence of this. Even if we assume that these names refer to the same entity, this would not resolve the inconsistencies in the record.

The Petitioner explains in his affidavit that he wrote a statement in his native language of Portuguese in April 2019, which he later updated and translated into English in April 2020 but forgot to update the date from April 2019 to April 2020. However, this explanation does not resolve the inconsistencies we discussed in our prior decision. First and foremost, the Petitioner has not offered any evidence to address the issues we identified in the [redacted] letter. Furthermore, the Petitioner appears to either confuse his "Professional Declaration," submitted on appeal, with his "Petitioner Letter," submitted with the initial filing, or to suggest that they are the same document, one of which is the updated version of the other.

The "Petitioner Letter," included in the initial filing, is comprised of an undated typed statement in Portuguese that the Petitioner signed. Accompanying the "Petitioner Letter" is an English translation of it, which contains the translator's signature at the bottom with the date April 5, 2019, and a statement that [redacted] translated the document.[1] By contrast, the "Professional Declaration," a document that appears to have been submitted for the first time on appeal, is dated April 2, 2019, and does not appear to have a Portuguese original, but rather, is itself in English.

The Petitioner's explanation that he forgot to update a date from April 2019 to April 2020 when he translated and updated his own statement for submission in response to the Director's request for evidence

[1] On motion, the Petitioner provides a new translation of his "Petitioner Letter," translated by [redacted] on October 20, 2021.

(RFE) adds further inconsistencies to the matter. First, the Petitioner's undated "Petitioner Letter" was already translated by [redacted] on April 5, 2019, and therefore the Petitioner would not need to translate his own statement into English. Second, as the "Petitioner Letter" is undated, this would appear to negate a need to update the date, and therefore would not occasion the Petitioner to accidentally forget to update the date. Furthermore, if the Petitioner was capable enough in both languages to translate the document himself, we would question why the Petitioner wrote a document in Portuguese instead of English in the first place.

Regarding the "Professional Declaration," dated April 2, 2019, the Petitioner did not provide any documentation to suggest that this had an accompanying Portuguese original. Further, as explained, it was submitted for the first time on appeal and therefore, was presumably the most recent and current statement available at the time, negating the need for it to be updated.[2] Therefore, even if the "Professional Declaration" is the document for which the Petitioner claims he failed to update the date, this would not resolve its first-time appearance on appeal and the lack of a previous version in the record. If the Petitioner purports to explain that the "Petitioner Letter" was updated and renamed the "Professional Declaration," this would not resolve the fact that the "Petitioner Letter" was undated and would therefore not require a date change. Furthermore, whether the "Professional Declaration" is dated either April 2019 or April 2020 does not resolve the inconsistency that the Petitioner claimed to be providing services to [redacted] earlier than when the [redacted] letter stated that such services commenced.

The Petitioner also highlights that his business plan, dated September 2020, contains the statement that [redacted] most prominent supplier is [redacted] a cement manufacturer based in [redacted] Florida."[3] Presumably, he references this information to clarify that the business relationship with [redacted] as referenced in his "Professional Declaration," existed in the year 2020 in order to support his assertion that he simply forgot to update the date from April 2019 to April 2020. However, as explained above, the Petitioner's affidavit creates further inconsistencies rather than resolving the inconsistencies we already identified in our prior decision. In addition, the Petitioner states on motion that he worked with [redacted] from February 2020 to August 2020. If the Petitioner began his business relationship with [redacted] in February 2020, this would conflict with the information provided in the [redacted] letter. Second, if the Petitioner ended his relationship with [redacted] in August 2020, the statement in his September 2020 business plan that [redacted] "is" a supplier would appear to be inaccurate, as the use of the present tense insinuates a current relationship.

Moreover, the statement in the business plan that the Petitioner's "most prominent supplier is [redacted] suggests that [redacted] supplies the Petitioner's company with cement to carry out its operations. In other words, it appears as though the Petitioner is one of [redacted]

[2] As explained in our prior decision, the Petitioner argued on appeal that the Director disregarded the Petitioner's professional declaration, as well as a letter from [redacted] that were allegedly submitted in response to the Director's request for evidence (RFE). The Petitioner further argued on appeal that these letters should be taken into consideration regarding the national importance of the proposed endeavor. However, as we explained in our prior decision, "neither the Petitioner's professional declaration nor the letter from [redacted] appear in the record of the original RFE response, submitted on September 18, 2020, and neither documents were cited in the Petitioner's RFE response letter or in the submitted business plan. These documents appear to have been submitted on appeal as a copy of the previous RFE response." The Petitioner does not argue on motion that we erred in this determination.

[3] The Petitioner submitted the business plan in his September 2020 response to the Director's RFE.

[redacted] customers. However, on motion, the Petitioner suggests that [redacted] is the Petitioner's client and has contracted the Petitioner's company for maintenance work, as evidenced by a purchase order and bank statements that contain deposits from [redacted]. In his affidavit on motion and in his Professional Declaration submitted on appeal, the Petitioner lists out the services that his company provides to [redacted] however, the [redacted] purchase order does not reflect these services. Rather, it simply states that [redacted] charges $57,200 for a "Blanket Inspection." Based upon the evidence provided, it cannot be concluded that [redacted] or [redacted] is the Petitioner's client. More importantly, this purchase order does not resolve the statement in the business plan suggesting that [redacted] supplies the Petitioner with cement, nor does it resolve the inconsistencies we identified in our prior decision. As we explained in our prior decision, the Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. Id. Even if the Petitioner had credibly established that [redacted] is his company's client and that it contracted the Petitioner's company for services, this would still not establish the national importance of the proposed endeavor, as the business relationship appears to benefit the parties involved but does not stand to impact the field more broadly or rise to the level of national importance.

Lastly, we acknowledge the work proposal or bid that the Petitioner's company may have presented to the [redacted] Plant Maintenance Manager. However, the document features font and spacing inconsistencies, an email address ending in "@rgmail.com" rather than "@gmail.com," and words in a language other than English. Based upon these inconsistencies, we question whether this document represents a genuine proposal. Even if the Petitioner established that this is a genuine proposal and that the [redacted] Plant Maintenance Manager has hired the Petitioner's company for services, this would not evidence the national importance of the proposed endeavor, but rather, would pertain to the second Dhanasar prong.

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

III. CONCLUSION

For the reasons discussed, the Petitioner's motion to reconsider has not shown that our prior 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 prior decision. Therefore, the combined motion to reopen and reconsider will be dismissed for the above stated reasons.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.