U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23017343

Date: OCT. 26, 2022

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a marketing manager, 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 Nebraska Service Center denied the petition, concluding that the Petitioner 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 Petitioner's appeal and two subsequent motions. The matter is now before us on a motion to reopen and reconsider our latest decision.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion to reopen and reconsider.

I. MOTION REQUIREMENTS

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In addition, a motion to reconsider must (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

Under 8 C.F.R. § 103.5(a)(1) and 8 C.F.R. § 103.8(b), in general, motions must be filed within 33 days of the adverse decision. In response to the coronavirus (COVID-19) pandemic, however, USCIS extended the deadline for filing a Form I-290B, Notice of Appeal or Motion. A petitioner may file a Form I-290B within 60 calendar days from the date of the adverse decision, if USCIS issued the decision between March 1, 2020, and January 15, 2022.[1] As relating to a motion to reopen the

[1] *USCIS Extends Flexibility for Responding to Agency Requests*, available at https://www.uscis.gov/newsroom/alerts/uscis-extends-flexibility-for-responding-to-agency-requests (accessed on October 25, 2022).

proceeding, the filing deadline may be excused in the discretion of USCIS if a petitioner demonstrates that the delay was reasonable and was beyond their control. 8 C.F.R. § 103.5(a)(1).

II. ANALYSIS

We dismissed the Petitioner's appeal on December 22, 2020.[2] We received the Petitioner's first motion on February 24, 2021, more than 63 days after we dismissed the appeal. Accordingly, we dismissed the Petitioner's first motion as untimely on June 21, 2021. The Petitioner filed a second motion on August 19, 2021. In our March 2022 decision, we dismissed the Petitioner's second motion because he had not shown that our June 2021 decision was in error. We further explained that, even if we had excused his untimely motion, his submission did not offer new facts or evidence indicating that he qualified for classification as a member of the professions holding an advanced degree.[3]

A. Motion to Reconsider

With the present motion, the Petitioner submits a statement repeating earlier claims that he meets all three prongs of the *Dhanasar* analytical framework. In his statement, he reiterates that his work will benefit the U.S. economy by increasing the flow of money into the U.S. on a national level, contributing to U.S. gross domestic product, and employing U.S. workers. He also references previously submitted documentation, and recounts his past marketing experience and projects in the Philippines.

The review of any motion is narrowly limited to the basis for the prior adverse decision. Accordingly, we examine any new arguments to the extent that they pertain to our dismissing the Petitioner's second motion. In the current motion, the Petitioner requests that we review previously submitted evidence and makes arguments relating to his eligibility under the *Dhanasar* analytical framework. However, the Petitioner does not explain or demonstrate how we erred in dismissing his second motion.

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[2] *See* our decision dismissing the appeal at ID# 8468042 (AAO DEC. 22, 2020). Our appellate decision indicated the Petitioner had not established that he satisfied the regulatory requirements for classification as a member of the professions holding degree. Furthermore, as the Petitioner had not met the requisite first prong of the *Dhanasar* analytical framework, we concluded that he had not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (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.

[3] At the time of filing the petition on October 15, 2018, the Petitioner presented a diploma indicating that he received a Bachelor of Science degree in Business Administration from [redacted] in the Philippines in March 2014. While he provided his school transcript from [redacted], the Petitioner did not provide an academic evaluation to establish his diploma's equivalency to a U.S. baccalaureate degree. *See* 8 C.F.R. § 204.5(k)(3)(i)(B). Furthermore, the record reflects that he received the aforementioned bachelor's degree on March 23, 2014. Even if the Petitioner had provided an academic evaluation indicating that his bachelor's degree from [redacted] is equivalent to a U.S. baccalaureate degree, he had not demonstrated at least five years of progressive post-baccalaureate experience in his specialty at the time he filed the petition. With respect to the Petitioner's five years of progressive post-baccalaureate experience in his specialty, he must demonstrate such experience at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). Accordingly, the Petitioner has not established that he qualifies for the EB-2 classification as a member of the professions holding an advanced degree.

The Petitioner also restates that his first motion was sent on time and that the filing delay was reasonable and beyond his control. He cites to multiple cases in which the courts held that untimely filings should be excused. Our prior decision explained, however, that even if we were to excuse the late filing of the first motion to reopen, the record did not establish that the Petitioner qualifies for the EB-2 classification as a member of the professions holding an advanced degree. We further indicated that the Petitioner had not presented new facts on motion to establish that at the time he filed the petition, he satisfied the regulatory requirements for the EB-2 classification.

The Petitioner's arguments in support of the present motion to reconsider do not establish that we erred in upholding our determination that he had not demonstrated eligibility for the EB-2 classification as a member of the professions holding an advanced degree. The Petitioner therefore has not met the requirements for a motion to reconsider as he has not shown that we erred in our prior decision based on the record before us at the time of the decision. In addition, the present motion to reconsider does not establish that our prior decision was based on an incorrect application of law, regulation, or USCIS policy.

B. Motion to Reopen

The present motion does not offer new facts or evidence indicating that the Petitioner qualifies for classification as a member of the professions holding an advanced degree. He therefore has not overcome our prior determination on this issue.

III. CONCLUSION

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

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.