U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 27988085

Date: AUG. 4, 2023

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this 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 Petitioner did not qualify for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, and that 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 Petitioner's appeal and the matter is now before us on a motion to reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

"Exceptional ability" means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[1] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship

[1] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits U.S. Citizenship and Immigration Services' authority to reconsider to instances where an applicant has shown "proper cause" for that action. Thus, to merit reconsideration, a petitioner must not only meet the formal filing requirements at 8 C.F.R. § 103.5(a)(1)(iii) (such as submission of a properly completed and signed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. Specifically, a motion to reconsider must establish that our 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 proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

In our decision dismissing the Petitioner's appeal, we explained that his appellate submission was essentially a reiteration of the documentation and arguments he previously submitted in response to the Director's request for evidence (RFE). The Petitioner's appeal brief reasserted that he was an individual of exceptional ability citing the same evidence, documentation, and arguments the Director evaluated in the initial petition and in the response to the RFE. The Petitioner's appeal also re-emphasized his purported eligibility for a discretionary waiver of the job offer requirement, and thus a labor certification, under *Dhanasar* in the same manner that he did in the initial petition and in the response to the RFE. Because the Director had sufficiently explained the reasons for denial, we adopted and affirmed the Director's decision that the Petitioner had not demonstrated that he fulfilled at least three of the six regulatory criteria set forth at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[3] We also agreed with the Director that the Petitioner's inconsistent representations obscured the nature of his proposed endeavor such that he did not demonstrate its national importance under the first prong of the *Dhanasar* analytical framework.

On motion, the Petitioner provides the same arguments he made in his appeal brief and in response to the Director's RFE. In addition, he restates and describes the previously submitted evidence. The Petitioner requests that we review his previously submitted evidence and makes arguments relating to his eligibility for five of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii). He also requests that we reconsider his eligibility under all three prongs of the *Dhanasar* framework.

The review of any motion is narrowly limited to the basis for the prior adverse decision. Accordingly, we will examine any new arguments to the extent that they pertain to our dismissing his appeal. The Petitioner's motion, however, does not explain or demonstrate how we erred in dismissing his appeal. Nor does he argue or point to how we incorrectly applied law or policy in our prior decision, as required for a motion to reconsider. Disagreeing with our conclusions without showing that we erred as a matter of law or without pointing to policy that contradicts our analysis of the evidence is not a

[2] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[3] We noted that the Director gave individualized consideration of the evidence the Petitioner submitted with the initial petition and in response to the RFE.

ground to reconsider our decision. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (" [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 shown that our appellate decision erroneously applied law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. Accordingly, the Petitioner has not established that his current motion meets the requirements for a motion to reconsider under 8 C.F.R. § 103.5(a)(3). Therefore, we will dismiss his motion to reconsider.

The Petitioner has not shown that we incorrectly applied law or policy in our previous decision based on the record before us.

**ORDER:** The motion to reconsider is dismissed.