U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27528286

Date: AUG. 24, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner 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 Petitioner did not demonstrate the proposed endeavor's national importance or that a waiver of the requirement of a job offer would be in the national interest. We dismissed a subsequent appeal. The matter is now before us on 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.

A motion to reconsider must establish that our prior 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). The Board of Immigration Appeals generally requires that a motion to reconsider assert an error was made at the time of the previous decision. The very nature of a motion to reconsider is the claim that the original decision was defective in some regard. *See Matter of O-S-G-*, 24 I&N Dec. 56, 57 (BIA 2006). And our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). Under the above regulations a motion to reconsider is based on an incorrect application of law or policy. We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Whilst neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). The Petitioner's brief simply repeats and restates the arguments and documents they aver support the national importance of their endeavor that were introduced earlier in these proceedings. In determining national importance under *Dhanasar*, the relevant question is not the importance of the field, industry, or profession in which the individual will

work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have a 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. What is critical in determining the national importance under *Dhanasar* is whether the proposed endeavor has a potential prospective impact with broader implications which rise to the level of national importance. So it is not what duties or what occupation the noncitizen will fill or perform but their actual plan with their occupation and duties that is examined. The Petitioner does not state adequate reasons for reconsidering our conclusion that the their proposed endeavor does not rise to a level of national importance. They have not supported their stated reasons with any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy. And they have not established that the decision was incorrect based on the evidence in the record at the time of the decision.

The record as it is constituted does not support the Petitioner's contention that they are well positioned to advance their proposed endeavor. When evaluating whether a petitioner is well positioned to advance their proposed endeavor under the *Dhanasar* framework's second prong, we review the following and any other relevant factors:

- A petitioner's education, skill, knowledge, and record of success in related or similar efforts;
- A petitioner's model or plan for future activities related to the proposed endeavor that the individual developed, or played a significant role in developing;
- Any progress towards achieving the proposed endeavor; and
- The interest or support garnered by the individual from potential customers, users, investor, or other relevant entities or persons.

The record contains evidence of the Petitioner's education related to their field of endeavor. But simply having education, skills, and/or knowledge in isolation does not place a petitioner in a position to advance their proposed endeavor. This is only one factor amongst many factors which are evaluated together to determine how well positioned a petitioner is to advance a proposed endeavor. It is not clear from the totality of the evidence in the record how an individualized consideration of the multifactorial analysis under *Dhanasar's* second prong would demonstrate how well positioned the Petitioner is to advance their proposed endeavor. The record does not adequately describe whether the Petitioner's proposed endeavor remained the same as at the time of filing after they changed employers. And the record does not reflect how the Petitioner's prior performance of the duties described in the experience letters is either a similar effort as that of their proposed endeavor or how it constitutes a record of success. The record simply does not indicate any progress to achieving the proposed endeavor. And the recommendation letters the Petitioner submitted are not material, relevant, or probative evidence in the record of interest or support in the endeavor the Petitioner proposed in their petition. So the Petitioner has not demonstrated with material, relevant, and probative evidence that they are well-positioned to advance their proposed endeavor.

Disagreeing with our conclusions without showing that we erred as a matter of law is not a ground to reconsider our decision. *See O-S-G-*, 24 I&N Dec. at 58. The Petitioner has not identified an error in

our application of law or USCIS policy to our decision on the Petitioner's prior motion. And the Petitioner has not demonstrated that our decision was incorrect based on evidence in the record at the time we issued our decision. So the Petitioner has not shown proper cause for reconsidering previous our decision. The motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.