U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21385751

Date: JAN. 17, 2022

Decision Motion on Administrative Appeals Office Decision

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

The Petitioner, an assistant professor, 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 subsequent appeal, determining that the Petitioner had not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the analytical framework described in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). We also concluded in our appellate decision that since the Petitioner had not established his eligibility under the first *Dhanasar* prong, further analysis of his eligibility under *Dhanasar's* second and third prongs would serve no meaningful purpose.[1] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516,526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

Later, we dismissed the Petitioner's motions to reconsider and reopen the proceeding, reaffirming our previous determination on appeal that that he had not established eligibility under *Dhanasar's* first prong. The matter is now before us again on motions to reopen and reconsider our most recent decision.[2] With the motions, the Petitioner submits evidence and a brief asserting that he is eligible for a national interest waiver. 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 motions.

[1] Our appellate decision in this matter was ID# 10856941 (AAO MAR. 5, 2021).

[2] The Petitioner indicated on the Form I-290B, Notice of Appeal or Motion, that he was filing an appeal. We note that the Petitioner's instant submission is entitled "Motion to Reopen/Motion to Reconsider." Therefore, we will treat the submission as motions to reopen and reconsider our most recent decision despite the Petitioner's indication that he was filing an appeal in Form I-290B.

I. LAW

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

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *See INS v. Abudu*, 485 U.S. at 110.

II. ANALYSIS

By regulation, the scope of a motion is limited to "the prior decision," which in this case is our decision addressing the Petitioner's first motions to reopen and reconsider. 8 C.F.R. § 103.5(a)(1)(i). In our previous decision dismissing the Petitioner's motions we first concluded that while the Petitioner submitted new evidence in support of his motion to reopen, this documentation did not demonstrate new facts showing that he meets the "national importance" requirement of *Dhanasar*'s first prong, and therefore he did not overcome our prior determination on appeal. We also determined the Petitioner's arguments did not show in his motion to reconsider that we erred in concluding that he had not satisfied the "national importance" requirement of *Dhanasar*'s first prong based on the record before us on appeal, or that the dismissal of his appeal was based on an incorrect application of law, regulation, or USCIS policy. We dismissed the Petitioner's motions as they did meet the applicable requirements. 8 C.F.R. § 103.5(a)(4). For the sake of brevity, we incorporate our previous analysis of the record and will repeat only certain facts and evidence as necessary to address the Petitioner's assertions on motion to reconsider and new evidence submitted in support of his motion to reopen.[3]

In support of his current motions the Petitioner provides narrative and evidence to support his assertions of eligibility under *Dhanasar's* second prong. We did not render a determination relating to the Petitioner's eligibility under *Dhanasar's* second prong in our previous decision. Rather, since the Petitioner did not show his eligibility under *Dhanasar*'s first prong, we concluded further analysis of his eligibility under *Dhanasar's* second, and third prongs would serve no meaningful purpose. As such, we need not and will not address the Petitioner's arguments and evidence in support of his claims of eligibility under *Dhanasar's* second prong in the instant motions.

A. Motion to Reconsider

We are dismissing the motion because it does not satisfy the requirements of a motion to reconsider. The issue before is whether the specific endeavor that the Petitioner proposes to undertake has national importance under *Dhanasar*'s first prong. On motion, he asks that we reconsider his petition and

[3] Our previous decision in this matter was ID# 19328872 (AAO DEC. 8, 2021).

approve it, asserting that his proposed research plans meet the "minimum requirements" for approval under the Act and the *Dhanasar* analytical framework. While the Petitioner disagrees with our conclusion that he did not establish the national importance of his proposed endeavor in his previous motion to reconsider, he does not show how we misapplied law or USCIS policy, or that our previous decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). For instance, the Petitioner generally asserts that we did not read or consider some of the evidence that was present in the record when we rendered our previous decision. But he does not identify or discuss the specific documentation that he believes we overlooked in arriving at our conclusions, based on the evidence in the record at that time.

The Petitioner also alleges on motion that he has been "treated differently" than other petitioners, contending that other less qualified individuals have had their petitions approved while his petition was denied. We are not required to approve petitions where eligibility has not been demonstrated, merely because of the approval of other petitions which may have been erroneous. See *Matter of Church Scientology Int'l,* 19 I&N Dec. 593, 597 (Comm'r 1988); see also *Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). Furthermore, we are not bound to follow a contradictory decision of a service center. *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *3 (E.D. La. 2000), aff'd, 248 F.3d 1139 (5th Cir. 2001).

In summary, the Petitioner's general arguments put forth on motion do not establish that we erred when previously concluding that he had not satisfied the "national importance" requirement of *Dhanasar*'s first prong. The Petitioner has not met the requirements for a motion to reconsider as he has not shown that we erred in our previous decision based on the record before us on in the first motion. In addition, his motion to reconsider does not establish that our dismissal of the first motion was based on an incorrect application of law, regulation, or USCIS policy. Accordingly, we will dismiss his motion to reconsider.

B. Motion to Reopen

As discussed above, a motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Resubmitting previously provided evidence or reasserting previously stated facts do not meet the requirements of a motion to reopen. The new facts must also be relevant to the grounds of the unfavorable decision.

In support of his motion to reopen, the Petitioner notes that in our previous decision we acknowledged and discussed the submitted evidence regarding his academic teaching assignments, indicating that he is employed as an assistant professor in the Department of Earth, Environmental and Planetary Sciences at [redacted] University [redacted], where he teaches classes on topics such as "Weather and Climate" and "Global Environmental Problems." We concluded that this evidence did not show that the benefits of his instructional activities will have broader implications for his field, as opposed to being limited to the students at the institutions where he intends to teach.[4]

In our previous decision we also discussed evidence submitted to show that he is currently serving on the [redacted] International Committee as a member-at-large for a period

[4] In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

of four years. The [redacted] invitation letter stated that the "function of this committee is to serve as [redacted] coordination and communication resource seeking to promote, create, and enhance opportunities for international cooperation related to the scientific, educational, and outreach missions shared by [redacted] and like-minded professional societies, educational institutions, and government agencies," but we determined that it did not identify the research or teaching projects that the Petitioner plans to undertake.

On motion, the Petitioner submits evidence to show that he continues his scholastic pursuits and that he has received other job offers to perform professorship duties with different academic institutions. He provides documents to show that beyond teaching, he is involved in curriculum development for the organizations he is affiliated with. The Petitioner also provides an invitation for him to participate as one of several visiting professors in a five-week international curriculum event designed to promote, among other things, "a lively exchange of ideas with a diverse faculty team and international students who attend the class." It appears that the Petitioner is devoted to his teaching pursuits and is eager to share his knowledge with others in academic settings. But without more, he has not shown that his scholastic endeavors stand to have broader implications rising to the level of having national importance. *See Dhanasar* at 893.

The Petitioner also submits evidence to show his involvement in geological research funded by the [redacted] government for a two-year period commencing in 2018. He asserts that this research project "will run from 2018 through 2021." However, the grant letter and other documentation in the record does not indicate that the funding was extended beyond this two-year period, nor does it sufficiently explain the significance of this research project to the Petitioner's field of endeavor. The Petitioner must resolve these inconsistencies and ambiguities 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).

As evidence of his prospective research activities the Petitioner also points to research proposals for projects that he will be involved with at the university where he is employed, noting for example that he is a primary advisor for one such project and that these "projects and proposals under my guidance with other professors, are one of the proposed areas I am working on and will be working on in the future." He has provided research proposal documentation, but without more information about these research projects, the Petitioner has not established that through his involvement therein, his proposed endeavor stands to have broader implications rising to the level of having national importance. *See Dhanasar* at 893.

The Petitioner also provides evidence that he was briefly interviewed by [redacted] News in [redacted] 2021 to discuss the United Nation climate talks (COP26) which were occurring in Scotland at that time. On motion, the Petitioner discusses the importance of the initiatives discussed during the event, indicating that "[f]our major areas were highlighted for every nation to adapt to during the COP26 climate accord meeting." He states that he covered important topics during his interview "to increase the awareness and literacy to reduce gas emission to avoid the adverse impact of climate change in the future." However, the record does not reflect that he was involved in the COP26 climate talks other than to impart information to the public during his brief interview with [redacted] News.

We acknowledge that developing ways to mitigate the adverse impacts of climate change is an issue not only of national, but also global importance. However, in determining national importance, the relevant

question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* For the foregoing reasons, we determine that the Petitioner's evidence submitted in support of his motion to reopen does not constitute new facts showing that through his proposed endeavor he meets the "national importance" requirement under *Dhanasar*'s first prong. 8 C.F.R. § 103.5(a)(2). Accordingly, we will dismiss his motion to reopen.

We affirm our prior determination that the Petitioner did not sufficiently establish the significance of the teaching activities and prospective research projects he intends to undertake in the United States, and the connection between his prospective endeavor and the alleged broader implications of it. *Matter of Chawathe*, 25 I&N Dec. at 376.

III. CONCLUSION

The Petitioner has not shown proper cause for reopening or reconsideration of our prior decision, nor established eligibility for the benefit sought.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.