U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30681554

Date: APR. 1, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a personal financial advisor, seeks employment-based second preference (EB-2) 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 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 establish 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 subsequent appeal and motion to reconsider. The matter is now before us on a second motion to reconsider. 8 C.F.R. § 103.5.

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 to reconsider.

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). We do not consider new facts or evidence in a motion to reconsider.

In requesting a national interest waiver of the job offer requirement, a petitioner must 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 and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;

[1] *See also Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

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

The Director determined that the Petitioner's proposed endeavor has substantial merit. However, he concluded that the Petitioner did not establish that his proposed endeavor has national importance under the first prong of the *Dhanasar* analysis. The Director also concluded that the Petitioner did not establish that he was well-positioned to advance his proposed endeavor; or that, on balance, waiving the job offer requirement would benefit the United States.

We adopted and affirmed the Director's decision that the Petitioner had not established that his proposed endeavor has national importance. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994). We also reserved the Petitioner's remaining arguments concerning eligibility under the *Dhanasar* framework. *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").

In his previous motion to reconsider, the Petitioner submitted a brief nearly identical to his appellate brief. We determined that the Petitioner's "repetition of the same arguments does not show proper cause for reconsideration" and we dismissed the motion. In his current motion to reconsider, the Petitioner again submits a brief largely similar to his prior appellate brief and brief on previous motion.

A motion to reconsider pertains to our most recent decision. In other words, we examine any new arguments to the extent that they pertain to our dismissal of the Petitioner's prior motion to reconsider. 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. Here, the Petitioner alleges a general error in the Director's decision but does not identify any specific error of law or fact in our prior decision.

Upon review, we do not find any error or incorrect application of law or policy. The Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; the motion must demonstrate how we erred as a matter of law or policy. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit, in essence, the same brief and seek reconsideration by generally alleging error in the prior decision).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not shown that our prior decision contained errors of law or policy. Therefore, the motion does not meet the requirements of a motion to reconsider and must be dismissed.

ORDER: The motion to reconsider is dismissed.