U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31418292

Date: JUNE 10, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner is a lawyer who 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 (NIW) 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 Texas Service Center Director denied the petition, concluding the record 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 a subsequent appeal as well as a motion to reconsider. The Petitioner has now filed a second motion to reconsider. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motion.

I. LAW

Once a petitioner demonstrates eligibility for the 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 NIW petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant an NIW 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 purely discretionary determination of whether to grant or deny an NIW rests solely with USCIS. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining four U.S. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny an NIW to be discretionary in nature).

A motion to reconsider must: (1) state the reasons for reconsideration, (2) be supported by any pertinent precedent decision to establish that our prior decision was based on an incorrect application

of law or policy, and (3) establish that our prior decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider that does not satisfy these requirements must be dismissed. 8 C.F.R. § 103.5(a)(4). According to the Instructions for Notice of Appeal or Motion (Form I-290B, Notice of Appeal or Motion), a motion to reconsider must be supported by citations to appropriate statutes, regulations, precedent decisions, or USCIS policy. A motion to reconsider is based on the existing record and petitioners may not introduce new facts or new evidence relative to their arguments. *Id.*

Additionally, a motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. *See Matter of Medrano*, 20 I&N Dec. 216, 220 (BIA 1990, 1991). Rather, the "additional legal arguments" that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached in its decision that could not have been addressed by the party.

II. ANALYSIS

In our decision on the Petitioner's previous motion to reconsider, we noted our findings relating to the appeal and we evaluated their proposed endeavor's attributes to determine whether they demonstrated a potential prospective impact from the endeavor's broader implications or positive economic effects rising to a level of national importance. We further noted that substantial positive economic impacts, such as a significant potential to employ U.S. workers can be a relevant factor to evaluate whether a proposed endeavor rises to a level of national importance. Finally, we concluded the motion brief essentially reasserted the Petitioner's previous allegations and described their disagreement with the conclusions in our appellate decision. Simple disagreement, without showing how we erred, is not an adequate basis to file a successful motion to reconsider. *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 this motion to reconsider, the Petitioner notes while that economic impact is vital, it represents just one facet of national importance. The Petitioner continues stating:

> *Dhanasar* states as follows: "The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. Evidence that the endeavor has the potential to create a significant economic impact may be favorable but is not required, as an endeavors merit may be established without immediate or quantifiable economic impact."

Here, the Petitioner conflates two of *Dhanasar's* prong one requirements: substantial merit and national importance. When we evaluate national importance, the relevant question is not the factors the Petitioner highlights in the above quote. Rather, we focus on the "the specific endeavor that the foreign national proposes to undertake" and we look to evidence illustrating the "potential prospective impact" of his actual proposed work. *See Dhanasar*, 26 I&N Dec. at 889. A petitioner must demonstrate the proposed endeavor will "impact the field . . . more broadly" (*Id.* at 893) and that it has "broader implications" (*Id.* at 889). Such endeavors may have "national or even global implications within a particular field" (*Id.* at 889), "significant potential to employ U.S. workers or [have] other substantial positive economic effects, particularly in an economically depressed area, for instance" (*Id.* at 890), or a record of successful work in an area that furthers U.S. strategic interests (*Id.* at 892, 893).

Regarding the Petitioner's remaining arguments on motion, he highlights how his proposed endeavor aligns with U.S. strategic economic diversification in Central Asia. But simple alignment or shared common aspects with vague policy goals are not sufficient to meet the first prong's national importance portion. In focusing generally on the investment strategies the Petitioner identifies, he has not established his specific endeavor will substantially benefit and impact the industry more broadly, nor has he demonstrated he possesses a record of successful work in an area that furthers U.S. strategic interests. *Dhanasar*, 26 I&N Dec. at 893. This misplaced focus does not address the national importance requirements of the *Dhanasar* decision.

Finally, the Petitioner alleges that within our prior decision on the first motion, we ignored requirements contained in the *Dhanasar* decision. He claims we did not consider other evidence he presented, but fails to first identify any particular piece of evidence we ignored, then to explain what requirements under *Dhanasar's* prong one, national importance requirements the particular evidence meets. And still, he offers no citations to appropriate statutes, regulations, precedent decisions, or policy that we failed to follow when we dismissed his first motion.

The Petitioner's motion does not meet the applicable requirements of a motion to reconsider because he does not establish that our decision was based on an incorrect application of law or policy. *See* 8 C.F.R. § 103.5(a)(3). As he did not demonstrate that we incorrectly dismissed his first motion to reconsider, the Petitioner did not establish that he meets the requirements of a motion to reconsider here. Therefore, we will dismiss this motion.

III. CONCLUSION

The Petitioner has not demonstrated that we should reconsider our decision.

ORDER: The motion to reconsider is dismissed.