U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37690020

Date: APR. 23, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, an aircraft maintenance technician in the aviation industry, 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 Nebraska Service Center, after determining the Petitioner's motion to reopen and motion to reconsider "ha[d] not established eligibility for the requested benefit,"[1] again denied the petition on June 12, 2023, concluding the Petitioner does not meet at least three of the six criteria to establish exceptional ability and that he does not qualify for a national interest waiver. We dismissed a subsequent appeal, as well as a combined motion to reopen and reconsider, and a second motion to reconsider. The matter is now before us on a third combined motion.

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.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.[2]

As an initial matter, our review on motion is limited to reviewing our latest decision, the January 10, 2025 dismissal of the Petitioner's motion to reconsider. 8 C.F.R. § 103.5(a)(1)(ii). On motion, in

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[1] We acknowledge that the Director's June 9, 2023, decision stated that the motion to reopen and motion to reconsider "satisfie[d] the regulatory requirements for filing." But contrary to the Petitioner's assertions, it also explained that "[a]fter review of the record of proceeding, including your motion, USCIS has determined that you have not established eligibility for the requested benefit" and informed him that "USCIS is denying the approval of Form I-140" and sending "a decision letter under separate cover."

[2] *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

addition to submitting a brief, the Petitioner provides documentation which includes three new letters of recommendation in support of his assertion that he meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F), recognition for achievements and significant contributions *to the industry or field* (emphasis added) by peers, governmental entities, or professional or business organizations. However, like the previously submitted letters and as we have explained before, while the letters commend the Petitioner's services and contributions to his employers, the personal recognitions described and documented do not demonstrate that he has been recognized for achievements and significant contributions *to the broader aviation mechanics industry or field* as required by the plain language of the regulation.

The Petitioner also asserts that we applied a "stricter-than-required standard" when evaluating his eligibility in support of the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(E), membership in professional associations. The Petitioner continues to assert that our "interpretation . . . overlooks the broader context and purpose of professional qualifications," but cites to no regulation or policy in support. As we have previously explained, the regulation at 8 C.F.R. § 204.5(k)(2) defines profession as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation."[3] Although he again claims that he holds the equivalent of a U.S. bachelor's degree, the issue is not the Petitioner's qualifications, but rather the association's requirements for membership. In our prior decision, we acknowledged his Professional Aviation Maintenance Association (PAMA) membership, Federal Aviation Administration certifications, and academic credentials but concluded that he did not demonstrate that PAMA qualifies as a professional association consistent with 8 C.F.R. § 204.5(k)(2) based upon the provided membership requirements.

Here, the Petitioner makes the same or similar arguments regarding his eligibility for EB-2 classification as an individual of exceptional ability. Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. Nor has he established 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.[4] Therefore, the motions will be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[3] The occupations listed in this section are architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

[4] 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 seeks reconsideration by generally alleging error in the prior decision).