U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37693828

Date: APR. 29, 2025

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner is a chemical engineer in the nondestructive testing (NDT) field. He seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish that he satisfied at least three of the ten initial evidentiary criteria. We dismissed a subsequent appeal. The matter is now before us on a combined motion to reopen and 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.

First, we will address the Petitioner's motion to reopen which must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

On motion, the Petitioner disputes our decision to dismiss the appeal and states that "no new evidence is presented." Therefore, the Petitioner has not satisfied the requirements of a motion to reopen.

Next, we will address the Petitioner's motion to reconsider, which 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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner contests our prior decision arguing that we incorrectly applied the law and policy and did not properly consider the evidence, thereby resulting in an incorrect conclusion on the criteria at 8 C.F.R. § 204.5(h)(3)(ii), (v), and (viii), which served as the basis for dismissing the appeal. The Petitioner also challenges our decision to reserve a fourth criterion.[1]

First, the Petitioner challenges our conclusion regarding the criterion at 8 C.F.R. § 204.5(h)(3)(ii), which requires evidence of the Petitioner's membership in associations in his field that require outstanding achievements of its members as determined by experts in the field.

In dismissing the appeal, we agreed with the denial's conclusion that the Petitioner's highest level of certification, which he was awarded by a technical society for non-destructive testing (NDT) professionals, did not constitute membership in that society. Although we acknowledged the Petitioner's submission of materials about the society, we noted that the materials discussed certification by, but not membership in the society, and did not establish that the society requires outstanding achievements as judged by national or international experts in their fields. We also pointed out that the biographical information on record about members of the society's board of managers did not establish that the board members have been recognized as experts or that they judge the achievements of others.

On motion, the Petitioner argues that we "overlooked substantial evidence" showing that the society's certification "involves recognition by national and international experts"; the Petitioner states that "made a critical error by disregarding" the involvement of expert evaluation in the society's certification process. We disagree with these contentions which do not address the core of our conclusion on this criterion, mainly that the Petitioner did not establish that he is a member of an association in his field when he submitted evidence that he obtained certification that was awarded by an organization in that field. As discussed, obtaining certification, regardless of the level, is not synonymous with membership in the society that awarded that certification. The Petitioner's contention that we neglected to consider "the cross-disciplinary nature" of the NDT field does not address the cited evidentiary deficiency, which is that the Petitioner did not establish that he has membership in an association in his field. As such, the Petitioner has not established that we erred in applying the law or USCIS policy regarding this criterion.

Next, the Petitioner challenges our conclusion regarding the criterion at 8 C.F.R. § 204.5(h)(3)(v), which requires evidence of the Petitioner's original contributions of major significance in the field. Although we acknowledged the Petitioner's claims that his NDT methodologies have been broadly recognized and used in industries that rely on NDT technologies, we determined that the record lacked sufficient evidence to support these claims. We noted that the Petitioner neither named organizations that have adopted his techniques nor identified technical papers or best practices that cite his methodologies. We noted that financial benefits to the Petitioner's contractors and their clients do not automatically indicate that his contributions have had major significance in his field. In sum, we concluded that the Petitioner did not: 1) provide independent evidence of his claimed "technical

[1] We reserved consideration of the Petitioner's appellate argument regarding the criterion at 8 C.F.R. § 204.5(h)(3)(ix), which requires proof that the Petitioner commanded a high salary or other significantly high remuneration for his services. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions).

innovations" or their purported adoption by other organizations, or 2) explain how the claimed innovations impacted the NDT field.

On motion, the Petitioner asserts that we did not properly assess the originality of his work, claiming that he submitted "substantial evidence" that detailed his "expertise in radiographic testing (RT) and phased array ultrasonic testing (PAUT)." The Petitioner points to previously submitted letters from [redacted] and "independent industry sources," claiming that they serve as evidence that he "introduced innovative technologies and enhanced existing methodologies." However, the Petitioner does not specify the "independent industry sources" and contrary to his assertion, the letter from the engineering and construction firm contains only broad references to the Petitioner's "advanced methods," "expertise" in RT, and "exceptional proficiency" in PAUT, but it does not describe the Petitioner's methods to convey an understanding of how they are advanced; nor does that letter identify the Petitioner's original contribution or meaningfully discuss the originality of his "unique skill set" with respect to NDT methodologies. Further, the Petitioner asserts that the letter from engineering and construction firm describes his "critical contribution," which does not accurately convey this criterion's requirement that the contribution must be original. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), Criterion 5.

The Petitioner also challenges our reliance on *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134 (D.D.C. 2013). He asserts that unlike the petitioner in the cited case, he has provided "detailed and credible documentation from independent sources that confirm the originality and significance of his work." We disagree. Aside from making these broad references, the Petitioner has not adequately addressed our evidentiary analysis where we discussed the content of previously submitted recommendation letters from three companies that contracted the Petitioner's NDT services. Importantly, aside from disagreeing with our conclusion, the Petitioner does not identify specific errors in our assessment of the evidence, nor does he clarify his reference to "independent sources" or elaborate on the "detailed and credible documentation" that he believes supports his claims regarding this criterion. The Petitioner also does not specifically discuss the broadly referenced "contractors and experts" who he claims have explained how his innovations have "influenced the best practices and elevated the technical capabilities of NDT professionals throughout the region."

Accordingly, the Petitioner has not established that we erred in applying the law or USCIS policy regarding this criterion.

Lastly, the Petitioner challenges our conclusion regarding the criterion at 8 C.F.R. § 204.5(h)(3)(viii), which requires evidence of the Petitioner's performance in a leading or critical role in an organization with a distinguished reputation. The Petitioner's claim regarding this criterion is based primarily on the previously mentioned recommendation letters from companies that contracted the Petitioner to perform NDT services and state that the Petitioner performed in a critical role within their respective organizations. We discussed the statements made in each letter and concluded that they lacked sufficient detail to show that the Petitioner's contributions were of "significant importance to the outcome of the organization or establishment's activities." *See generally* 6 *USCIS Policy Manual* F.2(B)(1), Criterion 8.

First, regarding the letter from the engineering and management services company, the Petitioner asserts that we were disputing "the lack of precise documentation regarding total revenue or the

percentage attributed to the [P]etitioner's contributions." Contrary to this assertion, we pointed out that the letter in question did not specify how much total revenue the company generated and therefore it did not adequately corroborate the Petitioner's claim that his clients accounted for about 74% of the contractor's revenues. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (stating that a petitioner's assertions must be supported with relevant, probative, and credible evidence).

We then addressed the letter from the boiler rehabilitation contractor. On motion, the Petitioner asserts that we "erroneously discount[ed] the evidence by requiring numerical detail." However, the Petitioner's assessment of our analysis in incorrect as we made no mention of "numerical detail." We pointed out that while the letter referred to the Petitioner's role in enhancing operational efficiency and reducing "shutdown time" needed for boiler maintenance, it lacked sufficient detail and therefore did not establish that the Petitioner's work was of significant importance to the company's activities. In other words, we did not highlight the absence of "numerical detail" and focused on the general lack of detail about the Petitioner's specific contributions towards reductions in shutdown time or other efficiency improvements.

Finally, we addressed a letter discussing the Petitioner's role in a large oil refinery project in Egypt and found that the Petitioner provided sufficient evidence to establish that the heavy construction and engineering contractor that was responsible for the project had a distinguished reputation. We determined, however, that the contractor did not discuss the project's importance to the company's overall activities and therefore did not establish that the Petitioner's work was of significant importance to the company. On motion, the Petitioner highlights the amount of foreign investment funds that the contractor claimed were prompted by the oil refinery project. However, because the Petitioner does not address the key issue of the project's significance to the contractor's overall activities, he has not established that he played a critical role in the organization.

The Petitioner also contends that we improperly dismissed the distinguished reputation of the other contractors, finding only the heavy construction and engineering contractor to have satisfied this portion of the criterion. However, because we determined that the Petitioner did not establish that he assumed a leading or critical role within those contractors' respective organizations and the Petitioner has not established that we incorrectly made that determination, he has not satisfied this criterion, and we need not address the issue of whether these contractors had distinguished reputations. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions).

In sum, the Petitioner has not established that we erred in applying the law or USCIS policy regarding the three criteria discussed above. Accordingly, we properly determined that there was no need to address a fourth criterion, given that the Petitioner would not meet three of the criteria as required for a final merits determination. Therefore, while the Petitioner challenges our decision to reserve any discussion of the fourth criterion, he has not established that our approach was inconsistent with law or USCIS policy.

As stated earlier, the Petitioner has not offered new facts or submitted additional evidence in support of the motion to reopen. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.