U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33031831

Date: AUG. 12, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner 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 Texas Service Center denied the petition, concluding that the Petitioner did not establish that he was eligible for the visa classification, that the proposed endeavor is of national importance, or that it would be beneficial to waive the requirements of a job offer. We dismissed a subsequent appeal. The matter is now before us on motion to 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.

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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner argues that we misinterpreted the plain language of the regulations regarding advanced degrees and that the Petitioner qualifies as an individual of exceptional ability.

The Petitioner has not provided a sufficient basis for us to reconsider our decision. He contends that his high school diploma plus 30 years of work experience in the field qualify him as an advanced degree professional. A motion to reconsider must be supported with any pertinent precedent decisions. 8 C.F.R. § 103.5(a)(3). The Petitioner has not done so here. The motion cites to no case law to support this contention. He relies on his interpretation of the regulations to support the motion and an evaluation of his education and work experience.

The Petitioner's view that his high school diploma and work experience qualifies him as an advanced degree professional is incorrect. The policy manual states that an individual "who does not possess at least a U.S. bachelor's degree or a foreign equivalent degree is ineligible for [the advanced degree] classification." 6 *USCIS Policy Manual* F.5(A)(2), www.uscis.gov/policy-manual. Furthermore, the regulations do not allow baccalaureate equivalents based on combinations of education and experience. *See Employment-Based Immigrants*, 56 Fed. Reg. 60897-01 (Nov. 29, 1991) (stating that "both the Act and its legislative history make clear that, in order to...have experience equating to an advanced degree under the second [preference category], [a noncitizen] must have *at least* a bachelor's degree") (emphasis added). A bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm'r. 1977).

We also find the evaluation upon which the Petitioner relies neither probative nor credible, as the evaluator incorrectly based their findings on a rule that does not apply to the benefit currently being sought. The evaluation determined without analysis that a "High School diploma followed by more than five years of full-time work experience in the field of Business Administration is equivalent to a U.S. Bachelor of Business Administration." In support, the evaluation cites to our "three-for-one" rule, which according to the evaluator, "states that three years of relevant work experience is equal to one year of education." As a matter of discretion, we may use opinion statements submitted by a petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). Nonetheless, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here the advisory opinion is of little probative value as it conflicts with precedent and agency guidance in the USCIS Policy Manual as discussed above. Additionally, the evaluator's reliance on the "three-for-one" rule is misplaced. The "three-for-one" rule is not contained in the regulations regarding the immigrant employment petitions. *See* 8 CR 214.2(h)(4)(iii)(D) (limiting the "three-for one" rule only to education and specialized training requirements of the H visa). Therefore, the Petitioner has not established that he qualifies as an advanced degree professional based on his high school diploma and work experience.

The motion additionally contends that the Petitioner is an individual of exceptional ability. The Petitioner did not initially claim eligibility as an individual of exceptional ability, and until the present motion, has not stated which of the criteria he believes he met or what evidence demonstrates he has a degree of expertise above that ordinarily encountered in the field. In the letter submitted with the initial petition, he wrote that he "is eligible for EB-2 classification as a member of the professions holding an advanced degree...because he is a CEO Chief Executive and Entrepreneur with more than 11 years of work experience in the field." Later in response to the request for evidence, the Petitioner averred that he qualified for the advanced degree classification and added that "the petitioner satisfied at least three of the six regulatory criteria at 8 CFR 204.5(k)(3)(ii) and has achieved the level of expertise required for exceptional ability classification." However, he did not further identify or argue how he qualifies for the classification as an individual of exceptional ability.

In the appeal brief, the Petitioner also did not identify which of the criteria he claims to have met or what evidence establishes the Petitioner has a degree of expertise above that ordinarily encountered in the field. Instead, he argued that as the Director's decision did not argue against his classification, he believed that the Director determined that he met the classification. This is inaccurate. Only in the

current motion does the Petitioner identify the exceptional ability criteria claimed to have been satisfied. As the Petitioner did not adequately raise the issue on appeal, we find no error in our prior decision. *Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (declining to address a "passing reference" to an argument in a brief that did not provide legal support).

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 reconsider is dismissed.