U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32676137

Date: AUG. 21, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an aviation maintenance technician, 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 denied the petition, concluding that the record did not establish that the Petitioner qualifies for the EB-2 classification or for a national interest waiver as a matter of discretion. We dismissed a subsequent appeal. The matter is now before us on combined motions 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 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). 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

The Petitioner indicates on the Form I-290B, Notice of Appeal or Motion, that his submission is both a motion to reopen and a motion to reconsider. The Petitioner also submits a brief that refers to the submission as "the Motion to Reopen and Reconsider." However, the Petitioner does not identify a new fact, nor does he submit documentary evidence of such a fact in support of the motion to reopen. Because the submission does not identify a new fact, and it is not supported by documentary evidence of such a fact, it does not satisfy the requirements of a motion to reopen. *See* 8 C.F.R. § 103.5(a)(2). Therefore, the motion to reopen will be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion to reconsider, the Petitioner contends that we did not apply the proper standard of proof in our appellate decision, instead imposing a stricter standard. Upon review, we conclude that the evidence was properly analyzed to evaluate the Petitioner's eligibility by a preponderance of evidence and the Petitioner did not meet three of the six required criteria for a determination of exceptional ability, as discussed below. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

In analyzing the Petitioner's eligibility as an individual of exceptional ability, the Director determined that the Petitioner only met two of the required criteria and on appeal; 8 C.F.R. § 204.5(k)(3)(ii)(A) and (B). On appeal we agreed, concluding that the Petitioner was not eligible for EB-2 classification as he did not meet the remaining criteria. On motion, the Petitioner again claims that he meets the following three criteria; ten years of full-time experience in the occupation, membership in a professional association, and recognition for achievements and significant contributions. Although he mentions that he believes he possesses ten years of full-time experience in his occupation, he does not discuss his eligibility for this criterion in any detail or discuss how our appellate decision was based on the application of incorrect law or policy. Therefore, we will consider this issue waived and limit our analysis to the final two criteria that are addressed on motion.[1]

The Petitioner does not specifically state how we imposed a stricter standard than required but reiterates that he meets 8 C.F.R. § 204.5(k)(3)(ii)(E) based on his membership with the Professional Aviation Maintenance Association (PAMA). The Petitioner's membership in this organization was previously evaluated and addressed in the appellate decision. The record contains evidence of his membership in the organization, the bylaws of the organization, and pages from the PAMA website. The Petitioner asserts that PAMA is a professional organization in the field of aviation maintenance. We note that the term "profession" is defined at 8 C.F.R. § 204.5(k)(2) as "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." The bylaws state that to be a "regular member" of the organization, "[a]n applicant must be certificated under Federal Aviation Administration (FAA) Title 14 Code of Federal Regulations (CFR) part 65, subpart D—Mechanics or subpart E—Repairman, or foreign national aviation authority equivalent, or hold a Federal Communications Commission General Radio and Telephone certificate." The evidence in the record does not establish the occupation, or the membership in an association for that occupation, requires a U.S. bachelor's degree or foreign equivalent. Therefore, we conclude that he has not established that PAMA qualifies as a professional association under the regulatory definition, and he has not established that he meets 8 C.F.R. § 204.5(k)(3)(ii)(E).

The Petitioner states that he disagrees with the analysis in the appellate decision regarding 8 C.F.R. § 204.5(k)(3)(ii)(F) and that the recommendation letters in the record validate the significance of his achievements. In addition, the Petitioner states the expert opinion letters also speak to his abilities and contributions. On motion, the Petitioner submits a new letter from the employer. However, a motion to reconsider is limited to an incorrect application of law or policy based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Therefore, this letter was not part of the record when the appellate decision was issued, and we need not consider this letter on motion

[1] An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

to reconsider. However, even if we were to consider this letter, we note that while this letter praises the Petitioner's work that impacted their organization's operations and safe standards, it does not establish he made "significant contributions to the industry." Similarly, the appellate decision analyzed other recommendation letters in the record in detail, quoting and citing them and their compliments of the Petitioner's work. While we acknowledge that the letters attest to the experience and expertise of the Petitioner, they do not attest to, "significant contributions to the field." Although his work may have benefitted his employers, the record does not establish that his work has contributed to the field of aviation mechanics as a whole.

The record also contains various certifications that the Petitioner asserts, "serve as external validation and recognition of his contributions." The certifications in the record demonstrate the Petitioner's continued growth in the knowledge of his field and his personal achievements, however they do not establish significant contributions to the field as is required by this criterion. The Petitioner also highlights the expert opinion letters in the record as further proof of recognition, stating that they were previously overlooked. While they do speak to the Petitioner's experience in his field, the letters reiterate what can be found in the Petitioner's resume and the recommendation letters we previously reviewed. Neither discuss significant contributions the Petitioner may have made to the industry of aviation mechanics. Therefore, we conclude that the Petitioner has not met this criterion.

Lastly, the Petitioner claims that we omitted analyzing the evidence in the record that pertains to the first prong of the *Dhanasar* framework; namely the national importance of the Petitioner's proposed endeavor. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). In our prior decision, we declined to discuss the remaining arguments regarding the *Dhanasar* framework because the Petitioner did not establish he was eligible for the underlying EB-2 classification. Because the Petitioner did not qualify for the underlying EB-2 classification, further analysis of his eligibility under the *Dhanasar* framework would serve no meaningful purpose. As noted in our prior decision, we are not required to make findings on issues the decision of which is unnecessary to the results we reach. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n. 7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).

The Petitioner did not identify any new facts, or submit any additional documentary evidence of such facts, and therefore, the Petitioner has not established eligibility for a 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 motions 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.