U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35231827

Date: DEC. 10, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an aircraft 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 Texas Service Center denied the petition, concluding that the Petitioner did not qualify for EB-2 classification and 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 the Petitioner's appeal, his combined motions to reopen and reconsider, and a subsequent motion to reconsider. The matter is now before us again 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.

In our most recent decision dismissing the Petitioner's motion to reconsider, incorporated here by reference, we affirmed our determination that the Petitioner satisfied only two of the six initial evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii), and therefore did not establish himself as an individual of exceptional ability. We acknowledged the Petitioner's assertions that, in addition to meeting the evidentiary criteria at 8 C.F.R. §§ 204.5(k)(3)(ii)(A) and (C), he also met the evidentiary criteria at 8 C.F.R. §§ 204.5(k)(3)(ii)(B), (E), and (F), relating to ten years of full-time experience in the occupation, membership in professional associations, and recognition for achievements and significant contributions to the industry, but we affirmed our prior determinations that the he did not meet those criteria. On motion, the Petitioner again asserts that we erred in determining he did not satisfy these evidentiary criteria. In doing so, he relies on the same claims we previously addressed, without

establishing how we erred in our conclusions. Accordingly, for the reasons discussed herein, we must dismiss his motion to reconsider.

Here, the Petitioner again asserts that we erred in not considering his prior experience as a transportation manager and operation technician when evaluating whether he had ten years of full-time experience in the occupation. However, in our prior decisions we informed the Petitioner that we did not consider this experience to be in the "occupation" of aircraft mechanic as required by the plain language of the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(B). Specifically, in our most recent decision we acknowledged the Petitioner's assertion that the duties he performed as a transportation manager and operation technician "are analogous to those typically performed in the aircraft mechanic occupation." However, we explained that the plan language of the regulation requires the past experience to be "in the occupation" sought. Accordingly, we concluded that he did not satisfy this criterion. On motion to reconsider, the Petitioner again asserts that because the duties he performed are analogous to the duties of an aircraft mechanic, then we should consider this experience "in closely related occupations" to satisfy the evidentiary criterion, and we should "consider that the purpose of the regulation is to ensure that the Petitioner is sufficiently qualified for the occupation sought." We disagree, and conclude this interpretation would be inconsistent with the plain language of the regulation. Moreover, the Petitioner has not offered support for his contention that the evidentiary criterion is satisfied by a showing that the person is "sufficiently qualified for the occupation sought."

The Petitioner also asserts that we erred in relying on the definition of "profession" found at 8 C.F.R. § 204.5(k)(2) when evaluating whether the Petitioner met the evidentiary criterion relating to membership in professional associations. Specifically, he claims we erred when we concluded that he had not shown that the U.S. Federal Aviation Administration and the Brazilian *Agencia Nacional de Aviacao Civil* are professional associations as contemplated by the regulatory definition.[1] Instead, he reiterates that we should consider the definition of "professional association" used by several online dictionaries, rather than relying on the regulatory definition of "profession" at 8 C.F.R. § 204.5(k)(2). Beyond asserting that the regulation does not explicitly exclude licensing bodies from being considered professional associations, the Petitioner has not provided support for his assertion that we should not rely on the definition of "profession" provided in 8 C.F.R. § 204.5(k)(2) when evaluating this regulatory criterion. Accordingly, the Petitioner has not shown that we erred in our determination that he did not satisfy the regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E).

Additionally, on motion, the Petitioner disagreed with our conclusion that the evidence in the record does not demonstrate the Petitioner's significant contributions to the industry as required by 8 C.F.R. § 204.5(k)(3)(ii)(F), asserting that we overlooked key aspects of the evidence. For example, the Petitioner asserts the letter Mr. O-M- highlights his extensive experience with multiple aircrafts, and confirms his work directly impacts flight safety and operational efficiency, which align with industry-wide best practices. However, while his work may align with industry best practices, the Petitioner has not shown how the evidence establishes his significant contributions to the field. And the Petitioner points to the letter from Mr. T-R-, which identifies the Petitioner's participation in a pioneering project for the company, asserting that the Petitioner's "expertise and proficiency were

[1] In our prior decisions we explained that the regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" as any occupation having a minimum requirement of a United States bachelor's degree or foreign equivalent for entry into the occupation, and therefore we consider professional associations as those requiring at least a bachelor's degree for membership.

vital in ensuring the success of this venture," but again the record does not establish how his work on this project significantly contributed to the field.

The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). The Petitioner's contentions in his current motion merely reargue facts and issues we have already considered in our previous decisions. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision"). We will not re-adjudicate the petition anew.

Accordingly, 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, and the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.