U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35231072

Date: DEC. 12, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an aircraft mechanical maintenance specialist, 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. 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 the Petitioner did not establish eligibility for the underlying EB-2 immigrant classification or a national interest waiver. We dismissed a subsequent appeal and combined motions to reopen and reconsider. The matter is now before us again on combined motions to reopen and reconsider.[1]

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 reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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).

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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings (the dismissal of the appeal). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

[1] Although the Petitioner only marked the box for a motion to reopen on the Form I-290B, Notice of Appeal or Motion, he nonetheless asserts that he is submitting both a motion to reopen and reconsider in his brief accompanying the Form I-290B; accordingly, we will review the instant motion as combined motions to reopen and reconsider.

In our most recent decision dismissing the Petitioner's first combined motions to reopen and reconsider, we determined that the Petitioner's revised endeavor statement submitted on motion amounted to an attempt to materially change his proposed endeavor. Accordingly, we informed the Petitioner that we would not consider the materially changed proposed endeavor on motion, as a petitioner must establish eligibility at the time of filing.[2] And, relying on *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998), we also informed the Petitioner that he may not make material changes to his petition "in an effort to make a deficient petition conform to USCIS requirements." We therefore concluded that the new evidence submitted on motion did not establish his eligibility for the national interest waiver. Additionally, we determined that, on motion to reconsider, the Petitioner did not establish that our prior decision dismissing his appeal was based on an incorrect application of law or policy. Accordingly, we dismissed the Petitioner's combined motions.

On motion, the Petitioner submits a new brief along with a copy of his personal statement submitted before the Director and on appeal, and a copy of his endeavor statement submitted with his prior motion to reopen and reconsider. The Petitioner asserts that our prior decision inaccurately interpreted his submission "as two distinct endeavors rather than a single, cohesive proposal with complementary elements." According to the Petitioner, both his original submission and the statements submitted on motion[3] "focus on the same objective: enhancing the U.S. aviation maintenance industry through advanced, sustainable practices and innovative methodologies." He states that, while his initial filing provided an outline of a broader strategic plan (the "what" of his endeavor), his statement submitted on motion provided a "more detailed explanation of [his] methods and techniques," and did not materially change the endeavor. We disagree.

The record reflects that before the Director, the Petitioner indicated that he intended to work as an aircraft maintenance specialist to improve the aviation industry, and provide "safe and practical solutions to travel nationally or internationally." Specifically, the Petitioner claimed that he would troubleshoot, diagnose, and replace aircrafts, which would provide "mission-critical services" to numerous industries and in particular those operating in transportation, tourism, and healthcare. Then, in his appellate brief, the Petitioner again asserted that as an aircraft maintenance specialist, he would "provide aid in troubleshooting, diagnosing, and replacements of the aircraft," and would be "responsible for ensuring that aircraft are in proper working condition, which is essential to the safety of air travel." He also emphasized that since the initial filing he continuously maintained "his intention to offer his services to benefit a company in [the United States]," and relied heavily on the expert opinion letter in the record, which discussed the benefits of his individualized services as an aircraft maintenance specialist. In our decision dismissing his appeal, we explained that while we acknowledged the substantial merit of this endeavor, we agreed that the Petitioner had not demonstrated his endeavor would result in broader implications beyond the benefits provided to his prospective employers, or otherwise result in substantial economic effects.

---

[2] 8 C.F.R. §§ 103..2(b)(12); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971) (confirming that " [a] petitioner must establish eligibility at the time of filing" and that "a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts")

[3] The Petitioner repeatedly refers to his revised endeavor statement "submitted on appeal"; however, he did not submit this endeavor statement with his appeal. On appeal, the Petitioner relied on the same personal statement submitted before the Director. The new endeavor statement was submitted for the fist time with his combined motion to reopen and reconsider.

In his subsequent combined motions to reopen and reconsider, the Petitioner submitted a new endeavor statement in which he indicated that he intended to "revolutionize [the] aviation maintenance industry," by "implementing advanced sustainable practices. . . supported by comprehensive training programs for technicians adopting international best practices in environmental stewardship" with the goal of reducing "the ecological footprint of aviation maintenance operations drastically." As stated, we concluded that the new endeavor statement represented an impermissible material change to his initial proposed endeavor to "work in the United States as an [a]ircraft [m]aintenance [s]pecialist to improve U.S. Aviation Industry effectively, [and] provide aid in troubleshooting, diagnosing, and replacements of aircraft."

Now, on motion, the Petitioner claims that his original submission provided an outline of his "services offerings and the strategic vision behind establishing a specialized aviation maintenance business in the United States," yet this statement is not supported by the record. The Petitioner has continuously reaffirmed his intent to work directly for a U.S. company, and did not discuss his intention to revolutionize the field relying on the implementation of sustainable practices. And, while the Petitioner states that his endeavor statement submitted with his previous motion is complementary and provides the "how" to his initial endeavor, this is also not supported by the record. For example, in when discussing the apparent overlap of the two endeavors, the Petitioner appears to abandon one of the primary goals of the endeavor submitted with his prior motion. Specifically, he does not discuss his assertion that his endeavor would reduce the ecological footprint of aviation maintenance operations, including the reduction of hazardous material use, the promotion of recycling and reusability of aircraft parts, and also spearhead initiatives to introduce green technologies to the field. While this was discussed in his endeavor statement submitted on motion, the Petitioner has not addressed these goals, or otherwise explained how this change in focus did not materially change his endeavor.

Moreover, as stated, a motion should establish the Petitioner's eligibility for the benefit sought. Here, even if we were to conclude that the Petitioner's endeavor submitted on motion was not a material change, he still has not established its national importance. Specifically, he has not overcome our initial determination that the record does not establish his endeavor will lead to broader implications, beyond the immediate benefit provided to his prospective employers.

For the reasons discussed, we conclude that the Petitioner has not established new facts relevant to our decision that would warrant reopening of the proceedings, nor has he shown that we erred as a matter of law or policy. 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). Consequently, we have no basis for reopening or reconsideration of our decision, and the combined 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.