U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29865943

Date: FEB. 7, 2024

Motions on Administrative Appeals Office Decision

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

The Petitioner, an aircraft maintenance technician, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may excuse a job offer in this category - and thus a related requirement for certification from the U.S. Department of Labor (DOL) - if a petitioner demonstrates that a waiver of these U.S.-worker protections would be "in the national interest." *Id.*

The Acting Director of the Texas Service Center denied the petition. On appeal, we affirmed the Director's decision that the Petitioner neither demonstrated his qualifications for the EB-2 category nor the merits of a national interest waiver. *See In Re: 27521249* (AAO July 3, 2023).

The matter returns to us on the Petitioner's combined motions to reopen and reconsider. He submits new evidence and contends that we overlooked materials and imposed a stricter standard of proof than required.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we conclude that his motions do not establish his qualifications for the requested EB-2 category. We will therefore dismiss the motions.

I. LAW

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must establish that our prior decision misapplied law or USCIS policy based on the evidence at the time of the decision. 8 C.F.R. § 103.5(a)(3). On motion, we must limit the scope of our review to our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that meet these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring new evidence to have the potential to change the case's outcome).

II. ANALYSIS

The Petitioner asserts his EB-2 qualifications as a noncitizen of "exceptional ability." *See* section 203(b)(2)(A) of the Act. We concluded that he met two of six initial evidentiary criteria - one less than required for a final merits determination. *See* 8 C.F.R. § 204.5(k)(3)(ii); *see generally* 6 *USCIS Policy Manual* F.(5)(B)(2), www.uscis.gov/policy-manual.

We found that the Petitioner submitted official academic records showing that he has school certificates in aviation mechanics and a license to work as an aircraft maintenance technician. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A), (C). He contends that he also provided proof that he has: at least 10 years of full-time experience as an aircraft maintenance technician; membership in professional associations; and recognition for achievements and significant contributions in his field. *See* 8 C.F.R. § 204.5(k)(3)(ii)(B), (E), (F).

A. Membership in Professional Associations

This criterion requires "[e]vidence of membership in professional associations." 8 C.F.R. § 204.5(k)(3)(ii)(E). As used in this regulatory section, the term "profession" means "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." 8 C.F.R. § 204.5(k)(2).

The Petitioner submitted a membership letter to him from the [redacted]. The letter bears an August 2022 date. We therefore found that he did not demonstrate his [redacted] membership at the time of the petition's filing in August 2020. *See* 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to establish eligibility "at the time of filing the benefit request").

On motion, the Petitioner states that he gained [redacted] membership in September 2021 and provides a [redacted] letter to him dated that month. The letter demonstrates his [redacted] membership as of September 2021. But that date follows the August 2020 petition filing by more than one year. Thus, the Petitioner has not demonstrated his [redacted] membership at the time of the petition's filing.

The Petitioner also submitted copies of his aircraft mechanic licenses from two governmental agencies: the [redacted]; and the [redacted] We found that, contrary to 8 C.F.R. § 204.5(k)(3)(ii)(E), he did not demonstrate the agencies' qualifications as "professional associations" requiring bachelor's degrees for membership.

On motion, the Petitioner contends that the agencies have "stringent requirements" for licensing, including completion of tests and courses. But he has not demonstrated that the agencies' licensure requirements include bachelor's degrees. Thus, contrary to the regulation, the Petitioner has not established the agencies as "professional associations." We will therefore affirm our appellate findings regarding this evidentiary requirement.

B. Ten Years of Full-Time Experience in the Field

To meet this criterion, a petitioner must submit "[e]vidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought." 8 C.F.R. § 204.5(k)(3)(ii)(B).

We found that the letters from the Petitioner's former employers covered more than 10 years. But we concluded that the letters did not show that he worked at least 10 years in the intended occupation of aircraft mechanic.

On motion, the Petitioner contends that his former job duties as a transportation manager and operation technician relate to tasks typically performed by aircraft mechanics. He states that his experience in those roles with vehicles, heavy machines, and communication systems helped him to succeed as an aircraft mechanic.

The regulation requires at least 10 years of full-time experience "in the occupation" being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B). Thus, the Petitioner's experience in related jobs does not meet the criterion. We will therefore affirm our findings regarding this evidentiary requirement.

C. Recognition for Achievements and Significant Contributions

This criterion requires "[e]vidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations." 8 C.F.R. § 204.5(k)(3)(ii)(F).

We found that letters from the Petitioner's colleagues, teachers, and former employers offer "general praise" about him. But we concluded that the letters do not constitute recognition for achievements or significant contributions to the aviation industry, as they do not detail specific achievements or contributions affecting the industry. The Petitioner also submitted two letters from experts in the field, including a pilot/certified aviation manager and a U.S. university professor of mathematics and computer science who advises on his school's aeronautics program. We found that the expert letters do not specify, document, or analyze contributions that the Petitioner made to his field.

On motion, the Petitioner contends that, by disregarding the regulation's plain language, we effectively applied a standard of proof stricter than a preponderance of the evidence. He states that the letters from colleagues and professionals who worked closely with him "emphasize the significant impact he has made in his field." The Petitioner also submits three additional letters from current and former co-workers.

Although the Petitioner claims that he has had a "significant impact" on his field, the letters he submitted do not provide examples. His letters of recommendation praise his skills, abilities, and work. But they do not specify achievements or significant contributions he has made in the aviation industry. For example, a letter from his current employer states that he "contributes fundamentally to maintaining a safe flight environment in our operations" and "ensuring high-quality service to our customers." These contributions might significantly affect the Petitioner's employer. But the record does not demonstrate their effect on the aviation industry.

The three letters submitted on motion detail achievements and contributions by the Petitioner. But they do not explain how these achievements and contributions significantly affected the aviation industry. For example, a letter from an aircraft mechanic who previously worked with the Petitioner recounts one election day when the Petitioner performed an urgent repair on the brakes of the Brazilian president's plane, allowing the president to safely fly home and vote. The letter recognizes the Petitioner's skills and abilities. But it does not indicate that these contributions affected the aviation field as a whole.

The other two letters on motion state that, because of the Petitioner's expertise with a particular brand of aircraft, he was invited to work on the brand's first aircraft converted to cargo planes. The station maintenance manager who invited the Petitioner stated that the Petitioner's "expertise and proficiency were vital in ensuring the success of this venture."

The Petitioner's work on the converted cargo planes might reflect significant contributions to the aviation industry. But the letters provide insufficient information about the project or its effect on the industry to demonstrate the work's significance to the field. Thus, the Petitioner has not provided sufficient evidence of his recognition for achievements and significant contributions to the industry or field. We will therefore affirm our findings on this evidentiary criterion.

The Petitioner has met less than three of the six initial evidentiary requirements. Thus, he has not demonstrated his qualifications for the EB-2 category, and we cannot approve the petition. *See* 8 C.F.R. § 204.5(h)(3)(ii).

Our decision regarding the Petitioner's EB-2 eligibility resolves these motions. We therefore decline to reach and hereby reserve his arguments and evidence regarding the requested national interest waiver. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *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 did not otherwise qualify for relief).

III. CONCLUSION

Neither the Petitioner's motion to reopen nor his motion to reconsider demonstrate his eligibility for the requested immigrant visa category.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.