U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32051373

Date: JULY 10, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an automotive 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 had not established eligibility as an individual of exceptional ability and that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed a subsequent appeal. The matter is now before us on a combined motion to reopen and 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 combined 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).

We incorporate by reference our prior analysis in the appeal decision. By way of summation, the Director concluded that the Petitioner did not satisfy at least three of the exceptional ability criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F) and, thus, did not qualify as an individual of exceptional ability. On appeal, the Petitioner asserted that the record satisfies the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) and (F), in addition to two criteria that the Director found the record satisfies, thus satisfying at least three of the exceptional ability criteria.

In our prior decision, we explained that the record does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) because the criterion requires "[a]n official academic record showing that the [noncitizen] has a degree, diploma, certificate, or similar award from a college, university, school, or other institute of learning relating to the area of exceptional ability," but the record does not appear to

contain a qualifying degree and the underlying academic record does not fall within the field of automotive technology. In turn, we explained that the record does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) because the recommendation and opinion letters in the record do not indicate how the Petitioner has been recognized for his achievements and how his contributions to the industry or field are "significant," as required by the criterion.

On motion, the Petitioner does not provide a new, probative fact to establish that we erred in dismissing the appeal. Instead, the Petitioner reiterates information already in the record, and he requests us to contradict our prior decision about the same evidence despite our explanation of why the record does not establish eligibility. Because the Petitioner has not provided a new, probative fact to establish that we erred in dismissing the appeal, the motion to reopen will be dismissed. *See* 8 C.F.R. § 103.5(a)(2), (4).

Next, 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. However, aside from paraphrasing the language of four of the exceptional ability criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F), the Petitioner does not specify on motion to reconsider any particular law or policy, nor does the Petitioner elaborate on how our prior decision may have incorrectly applied such a law or policy. Instead, as noted above, the Petitioner requests us to contradict our prior decision despite our explanation of why the record does not establish eligibility. Because 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, the motion to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(3)-(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.