U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32722083

Date: JULY 25, 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 Acting 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 and dismissed his subsequent combined motions to reopen and reconsider. The matter is now before us on a second 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 motions.

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).

In our prior decision, incorporated here by reference, we affirmed our determination on appeal that the Petitioner did not meet at least three of the regulatory evidentiary criteria to establish exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii). Although the Petitioner submitted evidence sufficient to meet the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) and (C) through school certificates in aviation mechanics and a license to work as an aircraft mechanic, he did not demonstrate he met the following criteria, as he claimed.

A. Membership in Professional Associations

In our prior decision we explained that this criterion requires evidence of "membership in professional associations." 8 C.F.R. § 204.5(k)(3)(ii)(E). We also explained that as used in the regulation, the term "profession" is defined as "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). We determined the Petitioner's licenses to practice his occupation did not meet this criterion because he did not establish that the licensing agencies required its licensees to have bachelor's degrees.

On motion, the Petitioner again asserts that his licenses from the U.S. Federal Aviation Administration and the Brazilian Agencia Nacional de Aviacao Civil meet this criterion because regulatory bodies can be professional associations as they often play a crucial role in defining the standards and requirements for a profession. The Petitioner claims that under this criterion, membership can encompass any formal recognition or authorization granted by a relevant governing organization that confirms a person's status as a professional in their field. In support of these claims, the Petitioner submits an article on four types of professional organizations. In a motion to reconsider, the Petitioner must establish error in our decision based on the record of proceedings at the time our decision was issued. 8 C.F.R. § 103.5(a)(3). Consequently, we will not consider the article submitted on motion.

We do not discount the importance of the agencies that granted the Petitioner's licenses. The Petitioner has not established, however, that either of the licensing agencies require their licensees to have bachelor's degrees as the minimum requirement for entry into the occupation of aircraft mechanic consistent with the regulation's definition of profession at 8 C.F.R. § 204.5(k)(2). The Petitioner's claims on motion establish no error in our prior decision and he does not meet this criterion.

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

In our prior decision, we explained that this criterion requires letters from current or former employers showing a petitioner 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 determined the Petitioner did not meet this criterion because his prior experience as a transportation manager and operation technician were not in his intended occupation of aircraft mechanic.

On motion, the Petitioner again claims that his duties as a transportation manager and operation technician "are analogous to those typically performed in the aircraft mechanic occupation." Regardless of whether or not the duties were analogous, the plain language of the regulation requires the past experience to be "in the occupation" sought. *Id.* The Petitioner does not meet this criterion as he has not established that he has at least ten years of full-time experience in the aircraft mechanic occupation.

C. Recognition for Achievements and Significant Contributions

This criterion requires evidence 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). In our prior decision, we explained that letters from the Petitioner's colleagues,

teachers, and former employers praised his skills, abilities, and work, but did not specify any achievements or contributions he has made to the aviation industry.

On motion, the Petitioner summarizes and quotes from three letters which he claims demonstrate his contributions. These letters attest to the Petitioner's successful past work, but do not establish his work made significant contributions to the aviation industry. For example, O-M-[1] states the Petitioner's exceptional work led to increased profits for [redacted] but does not indicate that his work extended beyond the company to significantly contribute to the aviation industry.

The Petitioner also asserts that we did not consider the Petitioner's certifications as evidence of his significant contributions. The Petitioner submitted certificates of his completion of technical aviation courses. These certificates evidence the Petitioner's qualifications to practice his occupation, but the Petitioner has not demonstrated that they constitute significant contributions to the aviation industry.

D. The Petitioner is not eligible for EB-2 classification

The Petitioner has not met at least three of the regulatory criteria required to establish exceptional ability. He is consequently ineligible for EB-2 classification. On motion, the Petitioner asserts we erred by not assessing his eligibility for a national interest waiver in our prior decision. As the Petitioner's ineligibility for EB-2 classification resolves the issues on motion, we again do not reach and reserve determination of the his eligibility for a national interest waiver. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

On motion to reconsider, the Petitioner has not established his eligibility for EB-2 classification and has not demonstrated that our previous decision was based on an incorrect application of law or policy based on the record at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.

[1] We use initials to protect the privacy of the referenced individual.