U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35795655

Date: MAR. 11, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur, seeks employment-based second preference (EB-2) 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 for the requested EB-2 classification and for a waiver of the required job offer, and thus of the labor certification. We dismissed a subsequent appeal, concluding that the Petitioner did not establish his eligibility for the EB-2 classification as an individual of exceptional ability. The matter is now before us on a 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.

I. LAW

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.

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(K)(2). A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.* [If a doctoral degree is customarily required for the specialty, the alien must possess a U.S. doctorate or a foreign equivalent degree. *Id.*]

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence:

(A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;

(B) Evidence 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;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the alien has commanded a salary, or other renumeration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

The regulation at 8 C.F.R. § 204.5(k)(3)(iii) provides, "If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility."

Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See generally* 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual. If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

II. ANALYSIS

The Petitioner states that he intends to continue his endeavor as an entrepreneur and business administrator through his U.S.-based companies, [redacted]

On motion, the Petitioner contends that we denied his appeal in error, as his appeal clearly outlined how the Director's decision misinterpreted and misapplied relevant regulatory standards. The Petitioner further contends that our decision exceeded the requirements established in *Matter of Chawathe* by applying a more detailed and rigorous review of the documents and holding the analysis

to an elevated standard. In support of his motion, the Petitioner submits a brief along with new and previously submitted documents.

Evidence of membership in professional associations.

The term "profession" as defined in 8 C.F.R. § 204.5(k)(2) means "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation." The Petitioner has claimed that his memberships in Auction ACCESS and the National Federation of Independent Business meet the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E). However, we agreed with the Director that the record did not contain sufficient evidence to demonstrate that the Petitioner met this criterion.

On motion, the Petitioner contends that he has demonstrated that his membership in the organizations qualify as professional associations based on the organizations' "selective membership criteria, industry relevance, and role in fostering professional development." The Petitioner further contends that our reliance on the Act's definition of "professional" fails to "recognize the evolving nature of modern professions." However, the Petitioner's record does not sufficiently establish that the organizations constitute professional associations as contemplated in the regulations. We therefore conclude the Petitioner has not met this criterion.

Evidence 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.

In our prior decision, we concluded that the Petitioner did not meet his burden of proof in demonstrating that he had at least ten years of full-time experience in the occupation for which he is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B). We explained that the Petitioner has not provided sufficient evidence to overcome the Director's finding that the discrepancies in the dates of the Petitioner's self-employment cast doubt on his work history. On motion, the Petitioner asserts that he submitted a business office records from his company to support previously submitted evidence and confirm his employment history and responsibilities within the business. The Petitioner further contends that the minor inconsistencies in the record should not undermine the overall strength of his evidence and argues that he has sufficiently met his burden of proof. However, it is the Petitioner's burden to resolve any inconsistencies in the record by providing independent objective evidence. Attempts to explain or reconcile such discrepancies without clear and competent objective evidence pointing to where the truth, in fact, lies will not suffice. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the Petitioner has not met his burden of proof to satisfy the requirements of this criterion.

A license to practice the profession or certification for a particular profession or occupation.

We affirmed the Director's decision that the Petitioner has not met the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C) by producing evidence of a license to practice the profession or certification for a particular profession or occupation. On motion, the Petitioner contends that the license issued by the Florida Department of Highway Safety and Motor Vehicles to his [redacted] business demonstrates his professional qualifications to act as a licensed motor vehicle dealer under Florida law. The Petitioner further argues that the license being issued in his business's name rather than

directly to him is a "technicality that does not negate" his qualifications under Florida law to engage in motor vehicle dealership activities and maintains that the license meets the requirements to practice his profession. However, the regulation requires evidence of the self-petitioner's own license to practice the profession or certification for a particular profession or occupation. Additionally, the Petitioner has not addressed our concern that he failed to provide evidence to demonstrate the validity of his license. Therefore, we conclude that he has not met this criterion.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

We concluded that the record lacked evidence to demonstrate recognition for achievements and significant contributions to the industry or field. 8 C.F.R. § 204.5(k)(3)(ii)(F). On motion, the Petitioner contends that we did not consider the totality of the documentation, overlooked key evidence supporting his substantial impact and recognition—such as expert opinion letter and letters of recommendation, and that we failed to acknowledge his businesses' contributions to the economy and industry.

Contrary to the Petitioner's assertions, we considered the Petitioner's arguments on appeal and determined that he has not met his burden of proof to meet the regulatory requirements of the criterion. The Petitioner contends that the letters submitted on his behalf affirm his businesses' economic contributions, his recognition by peers and clients, and provide detailed assessments of his achievements and impact on the industry. However, it is important to emphasize that the regulatory criterion requires the Petitioner not only to demonstrate contributions to the industry or field but that those contributions be "significant." Here, the record fails to establish how the Petitioner received recognition for his achievements or made contributions to the field or industry in a significant manner. Therefore, the Petitioner has not demonstrated that our determination on this criterion was incorrect.

III. CONCLUSION

Because the Petitioner did not demonstrate that we erroneously applied law or policy in dismissing his appeal, the Petitioner has not established that his motion satisfies the requirements for a motion to reconsider under 8 C.F.R. § 103.5(a)(3). Therefore, we will dismiss the motion.

ORDER: The motion to reconsider is dismissed.