U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30251618

Date: MAR. 15, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a business manager, 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 for EB-2 classification 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 combined motions to reopen and 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.

I. LAW

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits U.S. Citizenship and Immigration Services' (USCIS) authority to reopen or reconsider to instances where a petitioner has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, a petitioner must not only meet the formal filing requirements at 8 C.F.R. § 103.5(a)(1)(iii) (such as submission of a properly completed and signed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. Specifically, a motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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. § 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.

II. ANALYSIS

The issue before us is whether the Petitioner has submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal and/or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy. The Petitioner must specify the factual and legal issues raised on appeal that were decided in error or overlooked in our initial decision.

A. Prior AAO Decision

In our decision dismissing the Petitioner's appeal, we determined that the Petitioner did not satisfy at least three of the six regulatory criteria for classification as an individual of exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] We determined that, although the Director concluded that the Petitioner satisfied two of those criteria, including ten years of full-time experience at 8 C.F.R. § 204.5(k)(3)(ii)(B) and a salary which demonstrates exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii)(D), we did not agree with the Director's finding relating to 8 C.F.R. § 204.5(k)(3)(ii)(B). We also addressed the Petitioner's claims that he meets the criteria relating to membership in professional associations at 8 C.F.R. § 204.5(k)(3)(ii)(E) and recognition for achievements and significant contributions to the industry or field at 8 C.F.R. § 204.5(k)(3)(ii)(F), and determined that the evidence did not satisfy either of these criteria.

As we concluded that the Petitioner did not establish that he meets the initial evidence requirements of at least three of the criteria, our prior decision noted that we need not provide a final merits determination to evaluate whether the Petitioner has achieved the level of expertise required for exceptional ability classification,[2] or reach a decision on whether, as a matter of discretion, he is eligible for, or otherwise merits, a national interest waiver under the *Dhanasar* analytical framework. Accordingly, we reserved those issues.[3]

B. Motion to Reconsider

On motion, the Petitioner asserts that we did not consider all of the relevant evidence submitted in support of the petition in evaluating the Petitioner's claims made under the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(E) and (F).[4]

Regarding the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(E), which requires "[e]vidence of membership in professional associations,"[5] our appellate decision determined that the Petitioner did not establish

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[1] In our prior decision we noted that the record did not establish, and the Petitioner did not claim, that he qualifies as an advanced degree professional.

[2] *See generally* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual.

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).

[4] On motion, the Petitioner does not contest our determination that he did not submit evidence that satisfies the criterion relating to ten years of full-time experience at 8 C.F.R. § 204.5(k)(3)(ii)(B). In addition, the Petitioner did not claim eligibility, either before the Director, on appeal, or on motion, for the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) and (C). An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012))

[5] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.5(B)(2).

that his memberships in PAEI, ABRACO, CECIEx, and APEX-Brazil are tantamount to his membership in a "professional" association. We noted that the regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: "*[p]rofession* 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."[6] We found that the evidence presented was not sufficient to demonstrate that any of these associations has a membership body comprised of individuals who have earned a U.S. baccalaureate degree or its foreign equivalent, or that the organization otherwise constitutes a professional association.

For example, we agreed with the Director's determination that the according to the PAEI bylaws the organization is open to "all persons who are interested in furtherance of the purposes of the Corporation" and requires only a membership application and payment of an annual fee. Although our appellate decision acknowledged that the bylaws state that PAEI's purpose is to "promote and foster the role of the import and/or export professional," we found it was not apparent from the organization's bylaws that PAEI has a membership body comprised of individuals who have earned a U.S. baccalaureate degree or its foreign equivalent, or that the organization otherwise constitutes a professional association consistent with this regulatory criterion. Further, we determined that the Petitioner's evidence regarding ABRACO, CECIEx, and APEX-Brazil similarly does not establish that any of these entities require their members to be professionals as defined in the regulations. On motion, the Petitioner reasserts that PAEI, ABRACO, CECIEx, and APEX-Brazil are "professional in nature."

Pertaining to the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F), which requires evidence of recognition for achievements and significant contributions to the industry or field,[7] our appellate decision determined the submitted letters of support from coworkers and clients and several articles did not sufficiently demonstrate the Petitioner's recognition for achievements and significant contributions to the industry or field. We determined that the letters attested to his skills and described some of his job-related accomplishments as a business manager and how they impacted his employers, such as increased efficiency and profits. However, the letters did not sufficiently demonstrate his achievements and significant contributions to the import/export field or industry.

To the extent that the submitted letters recognized the Petitioner for broader contributions beyond carrying out his duties as a business manager, we found they are lacking detail. For example, we noted that a letter from I-T- of [redacted] states that the Petitioner "elaborated and led the execution of our 'Go-To-Market' strategy which was of great significance to the field," but does not elaborate as to how his work had such wide-ranging impacts that it constituted a "significant contribution to the industry or field." On motion, the Petitioner asserts he meets this criterion because the letters of recommendation and articles clearly show that his work has been recognized. He does not address, however, our determination that such letters did not demonstrate "achievements and significant contributions to the industry or field," which requires evidence of recognition for contributions that extend beyond his specific employers.

[6] Section 101(a)(32) of the Act defines "the term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."
[7] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.5(B)(2).

The Petitioner's brief in support of the motion to reconsider does not clearly address our specific reasons for determining that he did not meet the above two claimed criteria at 8 C.F.R. § 204.5(k)(3)(ii), or point to any particular evidence submitted in support of these criteria that we overlooked. Instead, it reasserts contentions already made in the Petitioner's appellate brief regarding his arguments in support of these criteria. In addition, he restates and describes the previously submitted evidence, and requests that we review his previously submitted evidence. As discussed, our previous decision fully addressed those arguments and evidence. For these reasons, the Petitioner has not established that we made an incorrect determination with respect to these criteria.

The review of any motion is narrowly limited to the basis for the prior adverse decision. Accordingly, we will examine any new arguments to the extent that they pertain to our dismissing his appeal. The Petitioner's motion, however, does not explain or demonstrate how we erred in dismissing his appeal. Nor does he argue or point to how we incorrectly applied law or policy in our prior decision, as required for a motion to reconsider. Disagreeing with our conclusions without showing that we erred as a matter of law or without pointing to policy that contradicts our analysis of the evidence is not a ground to reconsider our decision. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (" [A] motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior . . . decision.[8] The moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in our initial decision . . . .").

Here, the Petitioner has not shown that our appellate decision erroneously applied law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. Accordingly, the Petitioner has not established that his motion meets the requirements for a motion to reconsider under 8 C.F.R. § 103.5(a)(3). Therefore, we will dismiss his motion to reconsider.

C. Motion to Reopen

As noted, a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Here, the present motion does not offer new facts or evidence that warrant the reopening of this matter, and the motion to reopen will be dismissed.

III. CONCLUSION

The Petitioner has not demonstrated that we erred as a matter of law or USCIS policy in our prior decision, nor has he established new facts relevant to our decision that would warrant reopening of the proceedings. Consequently, we have no basis for reconsideration or reopening of our appellate decision. The Petitioner's appeal therefore remains dismissed, and his underlying petition remains denied.

[8] *O-S-G-* relates to motions to reconsider before the Board of Immigration Appeals, governed by 8 C.F.R. § 1003.2(b)(1), which states: "A motion to reconsider shall state the reasons for the motion by specifying the errors of fact or law in the prior Board decision and shall be supported by pertinent authority." These requirements are fundamentally similar to those found at 8 C.F.R. § 103.5(a)(3), and therefore the same logic applies.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.