U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34947563

Date: NOV. 1, 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 did not establish 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 and the Petitioner's first combined motion to reopen and reconsider. The matter is now before us on a second combined motion 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 combined motion.

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. 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).

On appeal, the Petitioner argued that he met at least three exceptional ability criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). He asserted, in relevant part, that his certificate showing completion of a high school-level education course, when combined with his work experience, shows that he holds the equivalency of a bachelor's degree in automotive technology. We noted that he did not provide "[a]n 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," as required to meet the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A).

In our decision on the Petitioner's first combined motion, we acknowledged his assertion that we incorrectly concluded that he did not meet the official academic record of a degree, diploma, or certificate criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) or the recognition for significant achievements criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F). However, we stated that he did not submit new, probative facts or specify how our decision incorrectly applied law or policy at the time we issued the appeal decision.

In support of his second combined motion, the Petitioner argues that he meets at least the official academic record of a degree, diploma, or certificate criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) and therefore qualifies as an individual of exceptional ability because the Director previously found he met two other criteria. He references previously submitted evidence about his service in the Brazilian Army and argues that it "included comprehensive training and capacitation programs, which are equivalent to formal academic education in the field of automotive maintenance and repair." He argues that military academies can qualify as college-level institutions and generally cites 6 *USCIS Policy Manual* F.5, https://www.uscis.gov/policy-manual, in asserting that "[m]ilitary training can be evaluated and translated into academic credits, which can be used to meet educational requirements for exceptional ability." However, 6 *USCIS Policy Manual, supra*, at F.5 does not contain language supporting the Petitioner's contention. He also reiterates his argument that an independent evaluator found his education and work experience to be the equivalent of a U.S. bachelor's degree. But as we previously explained, even if this were the case, it still would not meet the requirement of "[a]n 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." 8 C.F.R. § 204.5(k)(3)(ii)(A).

Furthermore, the scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen. Similarly, the Petitioner's contentions in his current motion merely reargues issues we have already considered in our previous decisions. *See e.g., 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 Board decision"). We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.