U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35020971

Date: NOV. 15, 2024

Motion on Administrative Appeals Office Decision

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

Our appellate decision affirmed this petition's denial. *See In Re: 31381433* (AAO July 17, 2024). We concluded that the Petitioner did not demonstrate his eligibility for the requested employment-based second-preference (EB-2) immigrant visa category. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i).

In these combined motions to reopen and reconsider, the Petitioner asserts that we erred by finding his satisfaction of less than the required three of six evidentiary criteria to qualify for EB-2 classification as a noncitizen of "exceptional ability." *See* section 203(b)(2)(A) of the Act; 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we conclude that his motion to reopen lacks documentary evidence supporting new facts and that his motion to reconsider does not demonstrate our misapplication of law or policy. We will therefore dismiss the motions.

I. LAW

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must demonstrate our prior decision's misapplication of law or policy based on the record at the time of the decision's issuance. 8 C.F.R. § 103.5(a)(3). On motion, we may review only our latest decision. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

II. ANALYSIS

A. Motion to Reopen

The Petitioner's filing does not state new facts, supported by documentary evidence. *See* 8 C.F.R. § 103.5(a)(2). "A motion that does not meet applicable requirements shall be dismissed." 8 C.F.R. § 103.5(a)(4). We will therefore dismiss the Petitioner's motion to reopen.

B. Motion to Reconsider

1. Misrepresentation of the Petitioner's Business Partner

The Petitioner notes that the Director of the Texas Service Center misidentified the Petitioner's business partner, confusing her with a translator of foreign documents in this matter. The Petitioner asserts: "This error led to flawed analysis that materially affected the petition's outcome." He states that the misidentification "undermines the credibility and weight of the evidence submitted" and "indicates that the evidence was not fully and accurately considered, and thus the conclusion drawn from this misinterpretation is flawed. This error directly impacted the evaluation of the Petitioner's qualifications and eligibility for the EB-2 NIW [national interest waiver]."

The Petitioner, however, has not explained how the Director's misidentification affected our appellate decision. As previously indicated, we can consider only our latest decision. *See* 8 C.F.R. § 103.5(a)(1)(i), (ii) (referencing "the prior decision" and "the latest decision"). Unlike the Director, we did not misidentify the Petitioner's business partner. In determining that the Petitioner's evidence did not establish his possession of at least ten years of full-time experience in the decorative lighting industry, *see* 8 C.F.R. § 204.5(k)(3)(ii)(B), we considered a letter from his business partner. But, contrary to the Petitioner's assertions, we did not doubt the letter's credibility or afford it diminished evidentiary weight. Rather, we simply found that, contrary to the regulation's requirements, the letter and other evidence of the Petitioner's employment did not establish his full-time, year-round experience in the occupation for at least 10 years.

For the foregoing reasons, the Petitioner has not demonstrated that the Director's misidentification of the Petitioner's business partner led us to misanalyse evidence. His assertion therefore does not establish his EB-2 eligibility as a noncitizen of exceptional ability.

2. The Evidentiary Criteria

The Director concluded that the Petitioner did not meet any of the six evidentiary requirements for qualification as a noncitizen of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).

On appeal, we found that the Petitioner did not submit evidence constituting:

- an official academic record;
- proof of at least ten years of full-time experience in the occupation sought; or
- a license or certification to practice his profession or occupation.

See 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), (C).

The Petitioner did not claim to meet the criterion regarding commandment of a salary or other remuneration demonstrating exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(D). We reserved consideration of whether he submitted evidence of membership in professional associations, or recognition for achievements and significant contributions to his industry under 8 C.F.R. § 204.5(k)(3)(ii)(E), (F). *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (holding that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions).

On motion, the Petitioner contends that he met the evidentiary requirements at 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), (C).

The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(A) 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 institution of learning relating to the area of exceptional ability."

On appeal, we found that the Petitioner did not demonstrate that the certificates he submitted constitute "official academic records" or that the documents' issuers include "a college, university, school, or other institution of learning." On motion, the Petitioner asserts that he "has submitted official academic records, including diplomas and certificates, which confirm his qualifications in areas relevant to his field of exceptional ability, such as Accounting Technician, Web Design, and Architecture and Urbanism."

The Petitioner's assertion, however, does not address our specific reasons for discounting his certificates. He neither explains how the certificates constitute official academic records nor demonstrates that the documents' issuers include a college, university, school, or other learning institution. *See Matter of R-S-H-*, 23 I&N Dec. 629, 641 (BIA 2003) ("It is not enough to challenge [findings] only in generalities.") The Petitioner therefore has not established our misapplication of law or policy, or his satisfaction of this evidentiary criterion.

C. The Remaining Issues

The Petitioner has not met one of the three evidentiary criteria for which he argues on motion. He therefore cannot demonstrate his satisfaction of at least three criteria as needed to qualify as a noncitizen of exceptional ability. We therefore need not reach and hereby reserve consideration of his evidence regarding his purported 10-years of full-time experience and his claimed submission of a license or certification to practice his profession under 8 C.F.R. 204.5(k)(3)(ii)(B) and (C). *See Bagamasbad*, 429 U.S. at 25. We also reserve consideration of his claimed satisfaction of all three prongs of our framework for adjudicating national interest waiver requests under *Matter of Dhanasar*, 26 I&N Dec. 884, 888-91 (AAO 2016). *Id.*

III. CONCLUSION

The motion to reopen lacks documentary evidence supporting new facts. The motion to reconsider does not demonstrate our misapplication of law or policy. Neither motion establishes the Petitioner's eligibility for the requested EB-2 immigrant visa category.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.