U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34943858

Date: NOV. 20, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a senior project manager, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, and a national interest waiver of the job offer requirement attached to this classification. See section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Workers (national interest waiver), concluding the Petitioner had not established eligibility for the underlying EB-2 immigrant classification and that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the appeal. The matter is now before us as a motion to reconsider. 8 C.F.R. § 103.5(a)(3).

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.

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, we concluded the Petitioner had not demonstrated his eligibility for the EB-2 classification as an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business as required under section 203(b)(2)(B)(i) of the Act. With respect to exceptional ability, we withdrew the Director's determination that the Petitioner's evidence had satisfied at least three of the six regulatory criteria listed at 8 C.F.R. § 204.5(k)(3)(ii) as required to satisfy the first step in the two-step process for analyzing exceptional ability. We agreed with the Director that the Petitioner had not established the regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii)(C), (D), and (F) and then withdrew the Director's determination that the Petitioner had met the regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii)(E). Consequently, the Petitioner did not establish he was an individual of exceptional

ability as his evidence satisfied only two of the regulatory criteria. We nevertheless also conducted a final merits determination and agreed with the Director that the Petitioner had not demonstrated he possesses a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business to establish exceptional ability, as required under 8 C.F.R. § 204.5(k)(2).

On motion, the Petitioner does not contest our conclusion that he is not an advanced degree professional or that he did not establish the exceptional ability criteria at 8 C.F.R. § 204.5(k)(3)(ii)(C), that he has a license to practice the profession or certification for a particular profession or occupation, and 8 C.F.R. § 204.5(k)(3)(ii)(D), that he commands a salary, or other remuneration for services demonstrating exceptional ability.

Rather, the Petitioner asserts we erred in determining he was not a member of a professional association under 8 C.F.R. § 204.5(k)(3)(ii)(E). According to the Petitioner, his "sociate affiliate" designation with the Institute of Electrical and Electronics Engineers (IEEE), and the IEEE's subsociety Power and Energy Society, signifies a level of professional recognition and credibility. However, as we explained in our appeal decision, the IEEE's bylaws state the "sociate affiliate" designation "refers to individuals who are not IEEE members but who are entitled to participate in certain activities of the Society." The plain language of this criterion calls for membership in a professional association. Here, the Petitioner has not established his membership in the IEEE.

The Petitioner also asserts that he is a member of the Project Management Institute (PMI), and asserts according to their bylaws, they are a "professional association." However, as discussed in our appeal decision, the term "profession" is defined at 8 C.F.R. § 204.5(k)(2) as "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation" and the PMI documentation in the record does not demonstrate that a U.S. bachelor's degree or foreign equivalent is a requirement for membership. The Petitioner does not assert that PMI requires a baccalaureate degree; rather he asserts that we omitted the fact that professional organizations "represent bodies that otherwise constitute . . . a professional association." To the extent the Petitioner is asserting that we should consider any organization that considers itself a professional organization as one, he does not cite to binding legal precedent in support.

The Petitioner also argues that we erred in determining he did not sufficiently establish recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations under 8 C.F.R. § 204.5(k)(3)(ii)(F). The Petitioner highlights parts of the two letters we addressed in our appeal decision. However, as we discussed in our decision, the letters by his former colleagues do not detail how the Petitioner's contributions to bettering their employer's practices or successfully fulfilling his duties amount to significant contributions to the broader industry or field of project management as required by the plain language of the criterion. The Petitioner's assertions to the contrary do not demonstrate that we erred in our analysis. For example, he highlights his colleague's assertions in one of the letters that the Petitioner made significant steps towards enhancing the overall supply chain efficiency in the industry. However, the Petitioner's colleague does not explain what these significant steps were or give context for how his practice impacted the industry on a significant level and does not otherwise indicate that he was recognized for this achievement. Similarly, he highlights that his other colleague believes he set a precedent for handling technically demanding projects in the industry, but his colleague does not provide detail on how he has set a precedent, what the precedent is, or how this precedent is a recognized achievement

and significant contribution to the industry. The Petitioner therefore has not established we erred in determining his evidence did not satisfy at least three of the six regulatory criteria for establishing exceptional ability.

In conducting a final merits determination, the second step of the exceptional ability analysis, we considered, e.g., the Petitioner's education, his membership in PMI, his affiliation with IEEE, his letters of recommendation, and his opinion letters and determined the totality of the evidence did not establish the Petitioner's exceptional ability. See 8 C.F.R. § 204.5(i)(3)(i) (explaining in a final merits determination we decide whether the evidence in its totality shows that the beneficiary is recognized as having a degree of expertise significantly above that ordinarily encountered in the field); see generally 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policymanual (providing as guidance, that the totality of a petitioner's evidence must demonstrate that he is above others in the field; qualifications possessed by most members of a given field cannot demonstrate a degree of expertise significantly above that ordinarily encountered). The Petitioner argues we did not give sufficient weight to his education, re-listing his degrees. However, we acknowledged the Petitioner's education, which is equivalent to a high school degree, and his training certificates in business administration, program management, and management and concluded they demonstrated the minimum qualifications to perform in his field but were not sufficient to demonstrate a degree of expertise significantly above that ordinarily encountered in the field. The Petitioner further asserts that we did not weigh his years of professional experience and argues he performed critical roles in world-renowned companies, which require more than just the minimum qualifications in the field. However, in reviewing his recommendation and opinion letters we specifically weighed the Petitioner's experience and contributions to his employers but noted that the recommendations and expert opinion letters only generally asserted his expertise and did not provide sufficient detail to establish he was an individual of exceptional ability.

The Petitioner also contends that his roles and responsibilities as described in two of his letters clearly demonstrate his control and influence in the success of two projects, demonstrating his exceptional ability. The Petitioner is responding to our discussion on appeal explaining that while his letters describe the importance of the projects he has worked on, they do not describe what control or influence he had in the projects' successes such that it could be considered his success and how that success contributed to the industry. On motion, the Petitioner highlights parts of the letters, for example, that he used best practices and coordinated and integrated different functions, but the letters do not identify how his specific contributions resulted in the success of the project or how that success significantly contributed to the industry beyond just his employer.

The Petitioner further asserts that we held him to a higher standard of proof by stating his opinion letter did not demonstrate his contributions were on a global scale. However, we did not require the Petitioner to make such a showing. An expert opinion letter the Petitioner submitted claimed that the Petitioner's employer was committed to growth on a global scale, and we noted that the Petitioner had not demonstrated, as an example, that he has contributed to his employer's growth on a global scale and, more relevantly, that his technical expertise is above those found in other project managers. See 8 C.F.R. § 204.5(i)(3)(i). The record therefore does not support that we held the Petitioner to a higher burden of proof. Rather, we determined he did not establish his extraordinary ability by the applicable preponderance of the evidence standard.

The Petitioner also revisits his arguments that his PMI membership evidences a level of dedication and ability that is above the norm for project managers, which we sufficiently addressed on appeal by explaining the Petitioner did not demonstrate that PMI has membership requirements above those commonly found by project managers working in the field such that his PMI membership reflects his exceptional ability. We similarly conclude that the Petitioner's arguments that his affiliation with the IEEE demonstrates his extraordinary ability are unsupported in the record, as the Petitioner has not demonstrated that his "sociate affiliate" designation requires a degree of expertise significantly above that ordinarily encountered in the field to support a finding of extraordinary ability. He therefore has not established any error in our final merits determination that the totality of his evidence did not show he has been recognized as having a degree of expertise significantly above that ordinarily encountered in the field for purposes of establishing he is an individual of exceptional ability.

The Petitioner has not established that we erred as a matter of law or policy in our prior decision or that the decision was incorrect based on the evidence in the record of proceedings at the time. Accordingly, he has not satisfied the requirements for a motion to reconsider. See 8 C.F.R. § 103.5(a)(3). Consequently, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.