U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32607219

Date: OCT. 02, 2024

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) immigrant classification as an individual of exceptional ability in the sciences, arts, or business, 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 for the underlying EB-2 visa classification and the national interest waiver. We dismissed the Petitioner's appeal, and the matter is now before us on a 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 motions.

A motion to reopen is based on documentary evidence of new facts to be provided in the reopened proceeding, and a motion to reconsider must establish that our prior decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy to the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(2)-(3). 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).

Our review on motion is limited to reviewing the latest decision in the proceeding. 8 C.F.R. § 103.5(a)(1)(ii). Thus, we will only consider new evidence and arguments to the extent that they pertain to our latest decision dismissing the Petitioner's appeal.[1]

As previously discussed, to qualify for a national interest waiver, the Petitioner must first establish eligibility for the requested EB-2 visa classification as an individual of exceptional ability in the sciences, arts, or business, by submitting documentation that satisfies at least three of six categories

[1] Accordingly, we will not address the Petitioner's general assertions of error in the Director's denial of his Form I-140, Immigrant Petition for Alien Workers.

of evidence described in the regulations at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[2] If this requirement is satisfied, we then conduct a final merits determination to decide whether the evidence as a whole shows that the Petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

The Petitioner asserted on appeal that he satisfied four of the six exceptional ability criteria: having an academic degree relating to the area of claimed exceptional ability; ten years of full-time experience in the occupation; a license or certification for the profession or occupation; and recognition for achievements and significant contributions to the industry or field. However, after de novo review of the supporting documentation, we concluded that it was sufficient only to show that the Petitioner satisfied one criterion – having an academic degree relating to the area of claimed exceptional ability.

In concluding that the Petitioner did not meet the other claimed criteria we explained that the evidence indicating that he has been an entrepreneur in the United States as an investor and partner in the cleaning service in Florida since 2016 was not adequate to show that he had "at least ten years of full-time experience in the occupation being sought" (an entrepreneur), as required under 8 C.F.R. § 204.5(k)(3)(ii)(B). We further determined that the Petitioner's *Professional Identity Card* and a *Certificate of Professional Regularity* indicating that he was registered with the Regional Council of São Paulo, Brazil as a technologist in the area of industrial production did not establish, as required under 8 C.F.R. § 204.5(k)(3)(ii)(C), that he held a license or certification in the occupation of an entrepreneur, in which he claimed exceptional ability. Finding the Petitioner ineligible for EB-2 classification on that basis alone, we reserved his argument concerning the criterion in 8 C.F.R. § 204.5(k)(3)(ii)(F) relating to evidence of recognition for achievements and significant contributions to the industry or field. Lastly, we concluded that even if the Petitioner had met at least three of the evidentiary criteria, the record as a whole did not show that he possessed a degree of expertise significantly above that ordinarily encountered among entrepreneurs.

Because the Petitioner's ineligibility for the underlying EB-2 visa classification was dispositive of the appeal, we reserved discussion of his claimed eligibility for a national interest waiver.[3] Nevertheless, we noted for the record that in response to the Director's request for evidence the Petitioner materially changed his initial proposed endeavor of managing and expanding his commercial and residential cleaning service in Florida to developing a retail supermarket company that would specialize in American, Brazilian, and Spanish products. We further noted that a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998).

On motion, the Petitioner submits a copy of our appellate decision and a brief. He asserts generally that our appeal dismissal decision is deficient, as it does not evaluate all the arguments he presented, which he claims would have led to a different conclusion, proving that he not only qualifies for the requested visa classification but also meets all requirements for a national interest waiver. We

[2] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).

acknowledge the Petitioner's assertion. However, as he does not point to any specific deficiencies in our analysis of the evidence he provided to support his claim of exceptional ability in the area of entrepreneurship, we are unable to meaningfully address it. Nor does the Petitioner cite any legal authority or USCIS policy guidance indicating that we are required to specifically address each and every argument made on appeal or that we erred in finding the overall evidence inadequate to establish that he met at least three of the six exceptional ability criteria set forth in the regulations. Consequently, as the Petitioner does not identify any particular legal or policy errors in our substantive evaluation of the evidence and the ultimate conclusion that it was not sufficient to establish his eligibility for the requested EB-2 classification as an individual of exceptional ability in the sciences, arts, or business, we have no basis to reexamine and reconsider our prior decision dismissing his appeal on this ground.

Lastly, as the Petitioner does not submit any additional evidence or information relevant to his claim of exceptional ability as an entrepreneur, he has not established any new facts that might support reopening of the instant proceeding.

In conclusion, we previously determined that the preponderance of the evidence the Petitioner submitted was inadequate to demonstrate his eligibility for the requested EB-2 classification as an individual of exceptional ability in the sciences, arts, or business. The Petitioner has not established any new facts to be provided in the reopened proceeding that might lead to a different outcome. He also has not shown that we erred as a matter of law or USCIS policy in dismissing his appeal, or that our decision was otherwise incorrect based on the evidence in the record of proceedings at the time it was issued.

The Petitioner therefore has not established a sufficient basis for us to reopen the proceeding and reconsider our prior decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.