



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 26638179

Date: AUG. 14, 2023

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Advanced Degree)

The Petitioner sought classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based “EB-2” immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center revoked the approval of the petition, concluding that the record did not establish that the Petitioner had the continuing ability to pay the proffered wage and that a bona fide job offer existed. The Director also entered findings of willful misrepresentation of material facts against the Petitioner and the Beneficiary. We dismissed the Beneficiary’s appeal finding that although the record established the Petitioner’s ability to pay the proffered wage, it did not establish that the job offer was bona fide.¹ Also, we affirmed the Director’s findings of willful misrepresentation of material facts against the Petitioner and the Beneficiary, since the Beneficiary did not address issues raised by the Director and deemed them waived. The matter is now before us on combined motions to reopen and reconsider. 8 C.F.R. § 103.5.

The Beneficiary 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 motions.

In our previous decision, incorporated here for reference, we found the Beneficiary did not establish a bona fide job offer. We addressed several inconsistencies in the record, and how the evidence in the record and submitted on appeal either did not address or overcome the inconsistencies to establish a bona fide job offer. We described a USCIS telephone interview with the Petitioner’s owner and president, [redacted] in which [redacted] stated he did not know the Beneficiary and did not file immigration documents on his behalf. Although the Beneficiary asserted on appeal that [redacted] did not recollect the phone interview and that there is a misunderstanding, our decision pointed out that the Beneficiary’s assertions did not overcome evidence in the record indicating USCIS verified

¹ As noted in our appeal decision, the Beneficiary is deemed an affected party in accordance with USCIS Policy Memorandum PM-602-0152, Guidance on Notice to, and Standing for, AC21 Beneficiaries about I-140 Approvals Being Revoked After Matter of V-S-G-Inc. (Nov. 11, 2017), <http://www.uscis.gov/laws/policy-memoranda>.

[redacted] identity at the time of the interview. Also, the Beneficiary did not submit additional evidence on appeal to overcome statements made by [redacted] during the telephone interview.

We also pointed out further discrepancies in the record that needed to be resolved to establish a bona fide job offer. The Beneficiary submitted the Petitioner's prior counsel's statement indicating the Petitioner retained counsel for the labor certification application. The Beneficiary argued that the Petitioner's counsel's preparation of the labor certification application demonstrated a relationship between the Petitioner and the Beneficiary. However, we explained that counsel's statement only refers to the labor certification application process and "does not state that the labor certification was prepared for the I-140 petition on behalf of the Beneficiary." We also explained that the Beneficiary's statements made during his 2014 USCIS interview claiming the Petitioner recently expressed a continuing intent to hire the Beneficiary, contradicted the Petitioner's business having been dissolved since 2010. Additionally, the appeal decision points to discrepancies in the recruiting material that were not addressed by the Beneficiary on appeal. We determined that the Beneficiary did not provide an explanation or evidence to resolve these inconsistencies, and therefore failed to establish a bona fide job offer.

Our appeal decision also affirmed the Director's findings of willful misrepresentation of a material facts against the Petitioner and the Beneficiary. We pointed out that the Beneficiary's appeal focused solely on the telephone call between USCIS and the Petitioner's owner, [redacted] instead of addressing other issues raised by the Director in its findings. Specifically, the Beneficiary did not address the misrepresentations made by the Beneficiary during his 2014 interview with USCIS, the misrepresentations in the recruitment process for the labor certification, and the misrepresentation of the total number of individuals employed by the Petitioner. Therefore, we deemed these findings of willful misrepresentation of material facts to be waived by the Beneficiary and affirmed the Director's findings.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." 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.

On motion, the Beneficiary submits documentation described as email correspondence "related to work projects from at least 2007" and as pay records to show the Beneficiary was on the Petitioner's payroll in 2008 and 2009. The Beneficiary asserts the documents are new facts showing his employment relationship with the Petitioner, thereby establishing a bona fide job offer and refuting the misrepresentation findings.

However, the documents described by the Beneficiary as email records of work projects are mostly illegible. The Beneficiary submitted about 20 pages of printouts, many of which appear to be emails and a few pages showing shirt and jacket sizings. The printouts are difficult to read, and we are unable to determine the parties to the emails, their dates, or the nature of the emails. There is also an email printout relating to submission of the labor certification application, however, the printout also is not entirely legible. While the email printout appears to indicate the Petitioner's labor certification application was submitted for processing, we are unable to determine the parties to the email and verify

its authenticity. Nevertheless, while the email refers to the Petitioner's prior counsel's submission of the labor certification application, it does not indicate the labor certification application was prepared in support of this petition, which was an unresolved discrepancy in the record.

The payroll records submitted are the Beneficiary's 2008 Form W-2, wage and tax statement, and five checks from the Petitioner made payable to the Beneficiary during 2008 and 2009. The Petitioner previously submitted the Beneficiary's 2008 W-2 with a reply to a notice of intent to revoke, and therefore is not a document showing a new fact. The checks for 2008 and 2009 are described as the Beneficiary's salary from the Petitioner to show a bona fide job offer. However, the checks do not show proof of payment to the Beneficiary since they do not have markings indicating they were processed through a bank. Also, even if the checks showed that the Petitioner paid the Beneficiary a salary in 2008 and 2009, they would not overcome the inconsistencies in the record and establish a bona fide job offer.

The evidence submitted with the motion to reopen does not resolve the discrepancies in the record. Therefore, the Beneficiary has not established a bona fide job offer. Also, the Beneficiary has not offered new facts or documentation relating to the misrepresentation findings. As a result, we will dismiss the motion to reopen.

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested benefit.

In his motion brief, the Beneficiary does not argue an incorrect application of law or policy in our determination that the record did not establish a bona fide job offer.

The Beneficiary claims in the motion brief that we incorrectly deemed the issues of misrepresentation of material facts against the Petitioner and the Beneficiary as waived. The Beneficiary contends that the appeal addressed the misrepresentation issues with the bona fide arguments in the appeal brief, as they are related issues. In this motion, the Beneficiary reiterates arguments raised on appeal that the Petitioner's owner must have misunderstood the nature of the phone call with USCIS and did not intend to misrepresent a material fact. The Beneficiary argues that findings of misrepresentation "require that a person knowingly made a false representation of a material fact with the intent to deceive the other party", citing *Matter of Tijam*, 22 I&N Dec 408, 424 (BIA) 1998 and 8 USCIS Policy Manual J, <https://www.uscis.gov/policymanual>.

We acknowledge that the term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. See *Matter of Tijam*, 22 I&N Dec. at 425; *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). However, while the Beneficiary addresses the Petitioner's statements made to USCIS during a phone interview, he did not address on appeal or in this motion the Director's other findings for misrepresentation, namely the misrepresentations by the Beneficiary during his 2014 interview with USCIS claiming the Petitioner expressed a continuing intent to hire the Beneficiary which contradicted the Petitioner's business having been dissolved since 2010, misrepresentations in the recruitment process for the labor certification, and misrepresentation of the total number of individuals employed by the Petitioner.

Since the Beneficiary did not address these findings of misrepresentation in the appeal, we appropriately deemed the findings as waived.

We note that in the motion brief, the Beneficiary does not provide an incorrect application of law or policy for our deeming the issues for the misrepresentations as waived.

The Beneficiary has not established that we misapplied any law or policy in our prior decision, and therefore does not meet the requirements of a motion to reconsider. 8 C.F.R. § 103.5(a)(3). The motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

The Beneficiary has not demonstrated that we should either reopen the proceedings or reconsider our appellate decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.