U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29207563

Date: DEC. 06, 2023

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Skilled Worker)

The Petitioner, a wholesale importer of costume jewelry, seeks to employ the Beneficiary as a marketing specialist and requests his classification as a skilled worker under the third preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based classification allows a U.S. employer to sponsor a noncitizen for lawful permanent residence to work in a position that requires at least two years of training or experience.

The Director of the Nebraska Service Center revoked the approval of the petition, concluding (1) the record did not establish that the Beneficiary possessed the work experience required for the offered job, and (2) the Petitioner did not submit sufficient evidence of its ability to pay the proffered wage. We dismissed the Petitioner's appeal and affirmed the revocation decision, concluding the Petitioner did not establish that the Beneficiary has the work experience required by the labor certification.[1] Subsequently, the Petitioner filed a motion to reconsider, which we also dismissed. The matter is now before us on motion to 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 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.

[1] Because this issue was dispositive of the appeal, we reserved and did not address the Petitioner's appellate arguments regarding its ability to pay the proffered wage. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (holding that "agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n. 7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible.).

An immigrant petition for a skilled worker requires an individual labor certification from the Department of Labor and must be accompanied by evidence that the noncitizen beneficiary meets the education, training, or experience, and any other requirements of the individual labor certification. *See* 8 C.F.R. § 204.5(l)(3)(i) and (ii)(B). The Director revoked the approval of the petition, and we dismissed the subsequent appeal, because the record contained unresolved inconsistencies regarding the Beneficiary's employment history and insufficient independent, objective evidence to demonstrate that he had the 48 months of work experience needed to satisfy the requirement stated on the labor certification.

In adjudicating the Petitioner's prior motion to reconsider, we acknowledged and addressed its claims that we (1) applied an incorrect standard of proof in weighing the evidence submitted, and (2) incorrectly determined the evidence provided to document his prior employment, which consisted of business registration documents for three foreign entities, was not independent and objective evidence. In doing so, we highlighted portions of our appellate decision in which we explained why the referenced evidence was insufficient to satisfy the Petitioner's burden of proof. Accordingly, we concluded that the Petitioner did not establish on motion that our previous decision was based on an incorrect application of law or policy at the time we issued it.

With the current motion, the Petitioner generally contests the correctness of our latest decision. The Petitioner once again contends that our office has given insufficient weight to "independent objective evidence that was submitted on behalf of the beneficiary" and focused instead on "minor discrepancies in the testimonies of beneficiary taken more than a decade ago during NIV application process." It maintains that the documentation it submitted to address these discrepancies was "genuine and accurate as they were issued by the governmental agencies of South Korea, Hong Kong and China," and questions why the evidence was "inexplicably and virtually discounted by USCIS."

We disagree that the record presents only "minor discrepancies" regarding the Beneficiary's employment history or that such discrepancies could be explained by the passage of "more than a decade." The record reflects that, in the labor certification filed with the Department of Labor in March 2016, the Beneficiary certified that he was employed full-time as president of [redacted] in South Korea from May 2005 until May 2013. The Petitioner was informed in a notice of intent to revoke that in May 2013, less than three years prior to the filing of the labor certification, the Beneficiary stated on a nonimmigrant visa application that he had been employed as the president of a Chinese company for the past four years, as president of [redacted] from May 2009 until February 2013, and as president of a Hong Kong company from October 2005 until March 2009.

The evidence the Petitioner submitted to resolve these discrepancies consisted of government-issued business registration documentation for all three foreign entities named on the Beneficiary's nonimmigrant visa application. On motion, the Petitioner maintains that this was the "next best secondary evidentiary documentation" available since the Beneficiary, as the owner of all three companies, cannot obtain experience letters from his prior employers.

We discussed this evidence in detail in our appellate decision and explained why it was insufficient to resolve the discrepancies and to demonstrate that the Beneficiary satisfied the 48-month work experience requirement stated on the labor certification. We do not, as suggested by the Petitioner on motion, question whether the foreign government issued documents are genuine. Rather, we

concluded that the evidence was insufficient to document the Beneficiary's 48 months of relevant work experience, as it did not demonstrate the details of his prior employment, including his job responsibilities, his dates of employment with each company, and whether he worked on a full-time basis. The Petitioner has not addressed these conclusions on motion.

The Petitioner further asserts that we incorrectly emphasized that "[c]ounsel's assertions were not evidence," noting that such assertions "merely served to aid in explaining and clarifying the credible, foreign government issued evidentiary document[s]." However, we did not discount counsel's explanations pertaining to the foreign government-issued documentation. Rather, we emphasized that we could not accept counsel's explanations regarding the Beneficiary's submission of inconsistent information regarding his employment history. We emphasized that such explanation should be in the form of an affidavit or declaration from the Beneficiary himself, evidence that was not provided in response to the notice of intent to revoke, in support of the appeal, or on motion.

Therefore, although the Petitioner challenges our decision dismissing its prior motion, it has not established that our previous decision was based on an incorrect application of law or policy at the time we issued it and has not shown proper cause for reconsideration. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.