U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29060642

Date: DEC. 07, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks to employ the Beneficiary as a store manager. It requests classification of the Beneficiary under the third-preference, immigrant category as a skilled worker. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based category allows a U.S. business to sponsor a foreign national for lawful permanent resident status based on a job offer requiring at least two years of training or experience.

After initially approving the petition, the Director of the Texas Service Center revoked the petition's approval. The Director found that the Petitioner did not establish that it had the continuing ability to pay the proffered wage in accordance with the requirements in 8 C.F.R. § 204.5(g)(2), that the Beneficiary possessed the required two years of experience for the offered position, and that the job offer was *bona fide*. The Director dismissed two subsequent motions to reopen and reconsider filed by the Beneficiary. We dismissed a subsequent appeal filed by the Beneficiary.[1]

The matter is now before us on the Beneficiary's motion to reopen and reconsider. We will dismiss the combined motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, "new facts" are facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

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 the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

On motion, the Beneficiary submits a brief from counsel with copies of evidence already in the record. The Beneficiary states that the dismissal of the appeal was "contrary to Policy Guidelines" and

[1] We treated the Beneficiary as an affected party pursuant to *Matter of V-S-G- Inc.*, Adopted Decision 2017-06, *14 (AAO Nov. 11, 2017) and accepted the appeal.

includes an excerpt from the U.S. Citizenship and Immigration Services Policy Manual, 2 *USCIS Policy Manual* A.4(B)(1), https://www.uscis.gov/policy-manual.

We will dismiss the Beneficiary's motion to reopen. The Beneficiary presents no new facts and the motion is not supported by any documentary evidence. As such, the Beneficiary has not demonstrated that its filing meets the motion to reopen requirements. *See* 8 C.F.R. § 103.5(a)(2); *see also* 8 C.F.R. § 103.5(a)(1)(i) (nothing that the scope of a motion is limited to "the prior decision").

The Beneficiary asserts that our prior decision was based on an incorrect application of USCIS policy. Specifically, the Beneficiary points to Volume 2 of the USCIS Policy Manual pertaining to nonimmigrant policies and procedures for granting an extension of stay, change of status, and extension of petition validity. 2 *USCIS Policy Manual* A.4(B)(1) discusses the significance of prior USCIS approvals and states that officers should defer to previous determinations of eligibility for nonimmigrant classification in "adjudicating a subsequent petition or application involving the same parties (for example, petitioner and beneficiary) and the same underlying facts."

The Beneficiary asserts that based on this policy guidance, deference should be given to the Director's prior approval of the petition and the determination that the Petitioner and the Beneficiary demonstrated eligibility for the immigrant petition. He further asserts that deference should be given to the approval of his Form I-485 Supplement J, Request for Job Portability Under INA Section 204(j), dated July 31, 2018.

The policy guidance to which the Beneficiary cites is specific to nonimmigrant petitions. This policy only addresses extensions of the validity of nonimmigrant petitions. It does not indicate that adjudicators of immigrant petitions should give deference to prior approvals of nonimmigrant petitions, or that the approval of a nonimmigrant petition creates a presumption of eligibility for immigrant classification.

We note that USCIS records reflect that no nonimmigrant petition has ever been filed or approved on behalf of the Beneficiary. We further note that Form I-485 Supplement J is not a nonimmigrant petition.[2] The Beneficiary does not cite to any policy guidance related to immigrant petitions. Nor does he cite to any authority that requires us to apply guidance for adjudicating nonimmigrant petitions to this matter. With respect to the initial approval of the immigrant petition, we do not owe deference to prior approvals which may have been erroneous. *See Matter of Church Scientology*, 19 I&N Dec.

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[2] The instructions to Form I-485 Supplement J state that this form is used to:

1. Confirm that the job offered to you in Form I-140 remains a bona fide job offer that you intend to accept once we approve your Form I 485 is approved; or
2. Request job portability under INA section 204(j) to a new, full-time, permanent job offer that you intend to accept once your Form I-485 is approved. This new job offer must be in the same or a similar occupational classification as the job offered to you in Form I-140 that is the basis of your Form I-485.

See I-485 J, Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j), https://www.uscis.gov/sites/default/files/document/forms/i-485supjinstr.pdf (accessed Dec. 5, 2023). The instructions state "…the adjudication of Supplement J, for applicants requesting job portability under INA section 204(j), is primarily limited to a determination of whether you have a bona fide job offer from a U.S. employer that is in the same or a similar occupational classification as the position for which the underlying Form I-140 was filed and approved." *Id.*

593, 597 (Comm'r 1988). When a petition is "filed on behalf of an alien who was never 'entitled' to the requested visa classification," and that petition was approved in error, the petition's approval is subject to revocation under section 205 of the Act.[3]

For the reasons discussed above, the Beneficiary has not shown proper cause for reopening the proceedings or reconsideration of our prior decision. Therefore, the Beneficiary has not established eligibility for the benefit sought.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[3] *See also Herrera v. USCIS*, 571 F.3d 881, 887 (9th Cir. 2009) (explaining that, "in order for a petition to 'remain' valid, it must have been valid from the start"); *see also Matter of Al Wazzan*, 25 I&N Dec. 359, 367 (AAO 2010) (holding that a beneficiary of a portable petition must have been "entitled" to the requested classification).