U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26293200

Date: MAY 5, 2023

Motions on Administrative Appeals Office Decision

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

The Petitioner, an operator of a grocery store/gas station, seeks to permanently employ the Beneficiary as manager. The company requests his classification under the third-preference, immigrant visa category for skilled workers. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This category allows a prospective U.S. employer to sponsor a noncitizen for lawful permanent resident status to work in a position requiring at least two years of training or experience. *Id.*

After the filing's initial grant, the Director of the Texas Service Center revoked the petition's approval. We dismissed the Petitioner's appeal and following combined motions to reopen and reconsider. *In Re: 19240911* (AAO Sep. 28, 2022). We agreed with the Director that the Petitioner did not demonstrate the Beneficiary's qualifying experience for the offered position or the availability of the job to U.S. workers. *Id.* We also affirmed the Director's finding that the Petitioner and Beneficiary willfully misrepresented his qualifying experience on the accompanying certification from the U.S. Department of Labor. *Id.*

The matter returns to us on the Petitioner's combined motions to reopen and reconsider. The company bears the burden of demonstrating eligibility for the requested benefit by a preponderance of evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we conclude that the motion to reopen does not meet applicable requirements and that the Petitioner has not established the Beneficiary's qualifying experience for the offered position. We will therefore dismiss the motions.

I. LAW

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must demonstrate that our prior decision misapplied law or U.S. Citizenship and Immigration Services (USCIS) policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant motions that meet these requirements and demonstrate eligibility for the requested benefit.

II. THE MOTION TO REOPEN

The record already contains the documentary evidence accompanying the Petitioner's motion to reopen. Thus, contrary to 8 C.F.R. § 103.5(a)(2), the motion does not state "new facts."

We must dismiss a motion that does not meet applicable requirements. 8 C.F.R. § 103.5(a)(4). We will therefore dismiss the Petitioner's motion to reopen.

III. THE MOTION TO RECONSIDER

The Petitioner asserts that the letters it previously submitted from the Beneficiary's two claimed former employers independently demonstrate his qualifying experience for the offered position of manager. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A) (requiring petitioners to submit letters from beneficiaries' employers as proof of claimed, qualifying experience).

As our prior decisions in this matter explain, however, we will not consider the letter from the Beneficiary's purported former employer in India because the Petitioner did not submit it in the company's response to the Director's notice of intent to revoke (NOIR) the petition. We need not consider evidence on appeal if a petitioner received prior notice and a reasonable opportunity to submit the proof. *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also* 8 C.F.R. § 103.2(b)(11) ("Submission of only some of the requested evidence will be considered a request for a decision on the record."). Also, contrary to 8 C.F.R. § 204.5(l)(3)(ii)(A), neither the letter nor affidavits from the Beneficiary's purported former coworkers at the business provide "a description of . . . the experience of the alien." Thus, even if considered, the documents would not demonstrate his possession of the requisite two years of experience "in the job offered" as listed on the labor certification. *See, e.g., Matter of Symbioun Techs., Inc.*, 2010-PER-01422, *4 (BALCA Oct. 24, 2011) (defining the term "in the job offered" on a labor certification to mean "experience performing the key duties of the job opportunity" as listed on the application). The affidavits from the purported coworkers also lack evidence that the Indian business employed the Beneficiary's purported former coworkers at the time he worked for the business.

The petition also included a letter from the Beneficiary's claimed former employer in the United States. As our prior decisions in this matter discuss, however, the letter states an employment start date that conflicts with other evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies). Online state government information indicates that the Beneficiary's purported U.S. employer did not form until May 2001, about eight months after the September 2000 start date he listed on the labor certification. *See* Tex. Comptroller of Pub. Accounts, "Taxable Entity Search," https://mycpa.cpa.state.tx.us/coa/. Also, the letter and the Beneficiary's Form G-325A, Biographical Information, which he submitted with his application for adjustment of status, state his employment start date at the business as November 2000.[1] Further, in a 2021 letter, the business's owner - Beneficiary's uncle - stated that the November 2000 start date is incorrect and that the Beneficiary

[1] Although unmentioned by the Director, the purported September 2000 start date of the Beneficiary's U.S. employment also conflicts with his entry date into the country. USCIS records and the Petitioner's Form I-140, Petition for Alien Worker, state the Beneficiary's U.S. arrival in October 2000.

began work at the U.S. employer in May 2001 when the business opened. The 2021 document from the Beneficiary's uncle, however, does not explain why the business's prior letter listed the November 2000 start date. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies with independent, objective evidence). Also, the Beneficiary's uncle signed both letters from the company. In the absence of independent, documentary evidence of the business's employment of the Beneficiary, his uncle's signing of the letters casts doubt on their credibility because of the signatory's potential bias for his nephew.

On motion, the Petitioner contends that, despite the Beneficiary's family relationship to his uncle, the letters from the U.S. employer demonstrate the Beneficiary's qualifying experience there. Counsel asserts that the Beneficiary's uncle signed the documents because he owns the business and 'there is no one else to sign the letters." Also, the Petitioner states that many people in Indian culture work for family members, and USCIS' allegation of bias against the Beneficiary's uncle "is simply discriminatory in nature."

The record, however, lacks evidence that USCIS impermissibly discriminated against the Beneficiary based on his or his uncle's nationality or citizenship. Rather, the record indicates that the Agency's doubts about the letter's credibility stem from the family relationship between the signatory and the Beneficiary, not their Indian heritage. *See Matter of H-L-H- & Z-Y-Z-*, 25 I&N Dec. 209, 215 (BIA 2010), *abrogated on other grounds, Hui Lin Huang v. Holder*, 677 F.3d 130, 131 (2d Cir. 2012) (discounting letters from an asylum applicant's relatives and friends, in part, because "[t]he authors of the letters are interested witnesses") (citations omitted).

Also, counsel's assertion that only the Beneficiary's uncle could sign the letters from the Beneficiary's purported former U.S. employer does not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). The Petitioner must substantiate counsel's statements with independent evidence, which may include affidavits or declarations. The 2021 letter from the Beneficiary's uncle does not address his purported sole ability to sign the letters. Thus, the motion to reconsider does not demonstrate our misapplication of law or policy in finding insufficient evidence of the Beneficiary's qualifying experience for the offered position.

III. CONCLUSION

The Petitioner's motion to reopen does not state new facts, and its motion to reconsider does not establish our misapplication of law or policy in finding insufficient evidence of the Beneficiary's qualifying experience for the offered position. As these conclusions affirm the appeal's dismissal, we need not consider the company's remaining contentions regarding the other revocation grounds. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("[A]gencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.")

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.