



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 28841186

Date: OCT. 30, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a travel agency, seeks to employ the Beneficiary as a manager of travel and tours. It requests classification of the Beneficiary 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 immigrant classification allows a U.S. employer to sponsor a noncitizen for lawful permanent resident status to work in a position that requires at least two years of training or experience.

The Director of the Texas Service Center initially approved the petition on May 10, 2006. The approval was revoked by the Director of the Nebraska Service Center on November 30, 2009 on multiple grounds. The Director determined that the Petitioner committed fraud or willfully misrepresented material facts in the labor certification with respect to its work address and the familial relationship between the Beneficiary and the Petitioner's owner/corporate officers. Based on the determination of fraud or willful misrepresentation of material facts, the Director invalidated the labor certification and revoked the approval of the petition, as it was not supported by a valid labor certification. As an additional ground for denial, the Director also concluded that the Petitioner did not establish its ability to pay the proffered wage in the years 2006, 2007, and 2008, and thus did not establish its continuing ability to pay the proffered wage from the priority date of November 2, 2005, onward.

We dismissed a subsequent appeal. Since the revocation of the petition in 2009, the Petitioner has filed, and we have dismissed, 14 combined motions to reopen and reconsider. The matter is now before us for the fifteenth time on combined motions 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 both of the motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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).

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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

The scope of a motion is limited to “the prior decision” and “the latest decision in the proceeding.” 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, the filing before us is not a motion to reopen and reconsider the denial of the petition, but our most recent decision of May 15, 2023, dismissing the Petitioner’s fourteenth combined motion to reopen and reconsider in this matter. Accordingly, in reviewing the motion to reopen, we will only consider new evidence to the extent that it pertains to that decision. Here, the Petitioner does not provide new facts to establish that we erred in dismissing the prior motion, but instead submits evidence of its tax returns that is already in the record. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision.

Regarding the motion to reconsider, the Petitioner’s contentions in their current motion merely reargue facts and issues we have already considered in our previous decisions concerning its ability to pay the proffered wage and whether it engaged in fraud or willful misrepresentation of material facts in the labor certification. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (“a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision”). We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.