U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30973480

Date: APR. 26, 2024

Motions on Administrative Appeals Office Decision

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

The Petitioner, a garment manufacturer, seeks to employ the Beneficiary as an alteration tailor. The company requests his classification under the employment-based, third-preference (EB-3) immigrant visa category as a "skilled worker." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). U.S. businesses may sponsor noncitizens for permanent residence in this classification to work in jobs requiring at least two years of training or education. *Id.*

After initially granting the filing, the Director of the Nebraska Service Center revoked the petition's approval and dismissed the Petitioner's following combined motions to reopen and reconsider. Affirming the Director's conclusion that the company did not demonstrate its required ability to pay the combined proffered wages of the offered job and jobs in other petitions it filed, we dismissed the Petitioner's appeal. *See In Re: 23969308* (AAO Sep. 25, 2023). We also agreed with the Director that evidentiary inconsistencies cast doubt on the Petitioner's required intent to employ the Beneficiary in the offered job and his intent to work in the job. *Id.*

The matter returns to us on the Petitioner's combined motions to reopen and reconsider. The company contends that: we erred in determining its ability to pay the proffered wage; it intends to employ the Beneficiary in the offered job; and he intends to work in the job.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we conclude that, despite our misstatements of the number of Form I-140 petitions the company filed in relevant years, the Petitioner has not demonstrated its ability to pay the offered job's proffered wage. 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 latest decision misapplies 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring new evidence to potentially change the case's outcome).

II. ANALYSIS

A. Motion to Reopen

The Petitioner submits copies of: the petition's approval notice; receipt and interview notices regarding the adjustment of status applications of the Beneficiary and his family; the Director's decisions regarding the petition's revocation and the company's motions; its response to the Director's notice of intent to revoke; documentation it submitted with its combined motions; information it received from USCIS in response to its request under the Freedom of Information Act (FOIA); case status results; the Beneficiary's first employment authorization document; and proof of its corporate reinstatement.

The record, however, already contained these materials. Thus, contrary to the requirements for a motion to reopen, the Petitioner has not stated "new facts." *See* 8 C.F.R. § 103.5(a)(2). We must dismiss a motion that does not meet applicable requirements. 8 C.F.R. § 103.5(a)(4). We will therefore dismiss the company's motion to reopen.

B. Motion to Reconsider

1. Ability to Pay the Proffered Wage

The Petitioner contends that our latest decision overstates the number of Forms I-140 it filed for other beneficiaries during the pendency of this petition and its accompanying labor certification. A petitioner must demonstrate its ability to pay the combined proffered wages of the petition's offered job and those it offered to beneficiaries of other petitions that were approved or pending after the petition's priority date. 8 C.F.R. § 204.5(g)(2); *Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014); *see generally* 6 *USCIS Policy Manual* E.(4)(D)(2), www.uscis.gov/policy-manual.[1]

This petition's priority date is December 10, 2002. Thus, from that date until the February 21, 2007 date of the petition's approval, the Petitioner must demonstrate its ability to pay the offered job's proffered wage of $25,854.40 a year, plus the combined proffered wages of the beneficiaries of its other Form I-140 petitions that were pending or approved after December 10, 2002. *See Matter of Estime*, 19 I&N Dec. 450, 451-52 (BIA 1987) (holding that adjudicators may initiate revocation proceedings and revoke a petition's approval if the evidence at those times "would have warranted a denial").

The Petitioner asserts that the Director found, and that we affirmed, its filing of 17 Form I-140 petitions in 2006 and 20 petitions in 2007. In response to the company's 2016 FOIA request, however, another USCIS office informed the Petitioner that the office did not find records of the company's filing any

[1] The Petitioner need not demonstrate its ability to pay the proffered wages of petitions that it withdrew or that USCIS rejected, denied, or revoked. *See* 6 *USCIS Policy Manual* E.(4)(D)(2). The company also need not establish its ability to pay proffered wages before their corresponding petition priority dates or after their corresponding beneficiaries have obtained permanent residence. *Id.*

Form I-140 petitions in 2006 or 2007. The Petitioner therefore contends that we inflated the number of proffered wages it must show its ability to pay.

Contrary to the Petitioner's contention, the Director did not state the company's filing of 17 Form I-140 petitions in 2006 and 20 in 2007. Rather, the decision dismissing the company's combined motions states the Petitioner's filing of 14 petitions in 2006 and 30 in 2007.

On reconsideration, we have reviewed USCIS records. They indicate the Petitioner's filing of 17 Form I-140 petitions in 2006, including this one, and 24 in 2007. We do not know why the Agency's other office could not find records of these petitions. In all, the records show that, between the petition's December 10, 2002 priority date and the filing's February 21, 2007 approval date, the company filed 35 petitions, including this one. Excluding four petitions that USCIS denied, the company must demonstrate its ability to pay the combined proffered wages of 31 petitions.[2]

In response to the Director's notice of intent to revoke (NOIR) the petition, the Petitioner provided a list and information about 23 Form I-140 petitions it filed. The list includes only four petitions the company filed during the relevant period between December 10, 2002 and February 21, 2007.[3] Thus, the record lacks further information about the other 27 petitions the company filed during that time.

The NOIR asked the Petitioner to provide a list and information about "all" the petitions the company filed during the relevant period. "Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request." 8 C.F.R. § 103.2(b)(14). Also, without the proffered wages and priority dates of the company's other applicable petitions, we cannot determine the amount of combined proffered wages it must demonstrate its ability to pay each relevant year. The Petitioner therefore has not demonstrated its ability to pay the proffered wage. We will therefore affirm the appeal's dismissal.

2. The Intents of the Petitioner and Beneficiary

Our finding of insufficient evidence of the Petitioner's ability to pay the proffered wage resolves these motions. We therefore decline to reach and hereby reserve the company's arguments regarding its purported intent to employ the Beneficiary in the offered job and his intent to work in the job. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant did not otherwise qualify for relief).

[2] USCIS records identify the 31 petitions by the following receipt numbers: [redacted]

[3] The four relevant petitions that the Petitioner listed are: [redacted] and this petition.

III. CONCLUSION

The Petitioner's motion to reopen does not meet applicable requirements. The company's motion to reconsider does not demonstrate that our latest decision misapplies law or policy, or the company's eligibility for the requested benefit. We will therefore affirm the appeal's dismissal.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.