U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF O-P-M-

DATE: DEC. 4, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a staffing provider, seeks to employ the Beneficiary as a registered nurse. It requests her classification 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, "EB-3" category allows a U.S. business to sponsor a foreign national for lawful permanent resident status to work in a position requiring at least two years of training or experience.

The Acting Director of the Nebraska Service Center denied the petition and the Petitioner's following motion to reopen. The Director concluded that the Petitioner did not demonstrate its required ability to pay the position's proffered wage or the approvability of the accompanying application for labor certification.[1] We summarily dismissed the Petitioner's appeal because, contrary to regulations, the filing did not assert an erroneous conclusion of law or statement of fact. *Matter of O-P-M-*, ID# 1559380 (AAO June 11, 2018).

The matter is before us again on the Petitioner's motions to reopen and reconsider. The Petitioner submits additional evidence and argues that, before the Service Center transferred the matter to our office, the company timely submitted a brief explaining the basis of its appeal.

Upon review, we will deny the motions.

I. MOTION CRITERIA

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 establish our prior decision's misapplication of law or policy based on the record at that time. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must also cite a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of USCIS or Department of Homeland Security policy. *Id.* We may grant motions that meet these requirements and establish a petition's approvability.

[1] The U.S. Department of Labor (DOL) has determined that the United States lacks sufficient nurses and that employment of foreign nationals in this "Schedule A" occupation will not harm the wages or conditions of U.S. workers in similar jobs. 20 C.F.R. § 656.5. The DOL has therefore authorized U.S. Citizenship and Immigration Services (USCIS) to adjudicate the labor certification application in these proceedings. 20 C.F.R. § 656.15.

II. ANALYSIS

An appeal must assert an erroneous conclusion of law or statement of fact. 8 C.F.R. § 103.3(a)(v). Here, in February 2018, the Petitioner filed a Form I-290B, Notice of Appeal, and accompanying documentation omitting the basis of its challenge to the petition's denial. In the alternative, the form indicated: "My brief and/or additional evidence will be submitted to the AAO [Administrative Appeals Office] within 30 calendar days of filing the appeal." As our appellate decision stated, however, by June 2018, we had not received a brief or evidence.

On motion, the Petitioner submits its appellate brief and evidence. It also submits delivery records, asserting that they demonstrate its timely filing of the documentation in March 2018. The delivery records, however, indicate that, contrary to the instructions on the Form I-290B, the Petitioner sent the documentation to the Service Center, not to our office. The record therefore establishes that the Petitioner filed its appellate brief and evidence at the wrong location.

The Petitioner notes that the Service Center did not transfer this matter to our office until after the company submitted its brief and evidence. The Petitioner's appellate documentation was not among the materials that the Service Center transferred to us. But, regardless of the transfer, the Form I-290B clearly instructed the Petitioner to submit any appellate brief or evidence to our office. *See* 8 C.F.R. § 103.2(a)(1) (incorporating a form's instructions into the regulations). Because the Petitioner submitted its brief and evidence to the wrong location, its appeal did not assert an erroneous conclusion of law or statement of fact. As such, the Petitioner has not demonstrated, either through the submission of new facts or citation to relevant legal authority, that we erred in summarily dismissing the appeal. Therefore, we will deny the motion to reopen and motion to reconsider.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of O-P-M-*, ID# 1907488 (AAO Dec. 4, 2018)