U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18668508

Date: DEC. 22, 2021

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for a Skilled Worker

The Petitioner, a convenience store with gas station, seeks to employ the Beneficiary as a store manager. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant category. 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" immigrant classification allows a U.S. employer to sponsor a foreign national 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 denied the petition on two grounds: the Director determined that the Petitioner did not establish its continuing ability to pay the proffered wage from the priority date onward or that the Beneficiary had two years of qualifying experience by the priority date, as required to meet the minimum requirements of the labor certification. The Petitioner filed an appeal, which we dismissed on the same grounds. The Petitioner then filed a motion to reopen and a motion reconsider. In our decision dismissing the motions we withdrew our previous finding that the Petitioner did not establish its ability to pay the proffered wage, but affirmed our other previous finding that the Petitioner did not establish that the Beneficiary gained at least two years of qualifying experience by the priority date of September 6, 2017. The Petitioner filed a second motion to reopen and motion to reconsider on the remaining issue of the Beneficiary's qualifying experience. We dismissed the motions.

The matter is now before us on a motion to reconsider. Upon review, we will dismiss the motion.

A motion to reconsider must demonstrate that our previous 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. *See* 8 C.F.R. § 103.5(a)(3).

In our previous decision we referenced the evidentiary shortcomings and discrepancies related to the Beneficiary's alleged experience at a store in Pakistan which had not been remedied or explained in earlier proceedings. We focused on one evidentiary item in particular – the photos of the inconsistent store signage – and concluded that "[t]he failure of the Petitioner and the Beneficiary to explain the inconsistencies in their photographic evidence casts doubt on the reliability of all the evidence

submitted in these proceedings in support of the Petitioner's claim that the Beneficiary gained at least two years of qualifying experience at [redacted] in Pakistan."

In the current motion to reconsider the Petitioner asserts that the AAO "did not consider the photos in their proper context" and maintains that the photos are real. According to the Petitioner, the one sign with the word "bakery" was a misspelling and only a draft of the signage that was ultimately adopted, which it asserts correctly identified the store as [redacted]. The Petitioner resubmits copies of two photos of the inconsistent signage that were already in the record.

Despite the Petitioner's contention, the current motion does not meet the requirements of a motion to reconsider because it does not allege any incorrect application of law or policy in our previous decision, as required in 8 C.F.R. § 103.5(a)(3). Therefore, we will dismiss the motion.

ORDER: The motion to reconsider is dismissed.