U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M- INC.

DATE: FEB. 8, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a provider of home health care services, seeks to employ the Beneficiary as a registered nurse. It requests her classification under the third-preference, immigrant category as an "other worker." Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). 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 job requiring less than two years of training or experience.

The Acting Director of the Nebraska Service Center denied the petition. The Director found that the minimum requirements of the offered position exceed two years of training or experience. The Director therefore concluded that the position neither requires unskilled labor nor qualifies for the requested classification.

On appeal, the Petitioner does not dispute the Director's conclusion that the offered position is ineligible for other worker classification. Rather the Petitioner states that it erroneously requested other worker classification and asks us to approve the petition in the skilled worker category. *See* section 203(b)(3)(A)(i) of the Act (providing visas to qualified immigrants capable of performing work requiring at least two years of training or experience).

A petitioner must establish eligibility as of a petition's filing and throughout its adjudication. 8 C.F.R. § 103.2(b)(1). A petitioner "may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to [U.S. Citizenship and Immigration Services (USCIS)] requirements." *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). Before a decision's issuance, a petitioner may request correction of a visa classification resulting from clerical error. USCIS, "Petition Filing and Processing Procedures for Form I-140, Immigrant Petition for Alien Worker," https://www.uscis.gov/forms/petition-filing-and-processing-procedures-form-i-140-immigrant-petition-alien-worker (last visited Jan. 31, 2019). USCIS advises petitioners to check their Form I-140 receipt notices to ensure that the notices state correct visa categories and, if not, to call the Agency "immediately." *Id.*

Here, the Petitioner filed its petition in April 2017, checking a box in Part 2 of the Form I-140 to request the Beneficiary's classification as an other worker. The Petitioner now states that it erroneously requested the visa category and asks us to approve the petition in the skilled worker

classification. The Petitioner states that, when requesting other worker classification, it misinterpreted the category's requirements. Thus, contrary to USCIS policy, the record does not establish that the classification request resulted from clerical error. Moreover, the record does not indicate that, after receiving the petition's receipt notice, the Petitioner notified USCIS of the erroneous classification within a reasonable period. The Petitioner has not demonstrated that it asked to change the visa category until appealing the petition's decision. Because the Petitioner did not request the visa classification's correction before the decision's issuance, USCIS policy bars the Petitioner's requested change.

As the Petitioner does not assert that the Director's decision was made in error, the appeal must be dismissed. *See* 8 C.F.R. § 103.3(a)(1)(v) (requiring summary dismissal of an appeal that does not allege an erroneous conclusion of law or statement of fact).

ORDER: The appeal is summarily dismissed pursuant to 8 C.F.R. § 103.3(a)(1)(v).

Cite as *Matter of M- Inc.*, ID# 1797075 (AAO Feb. 8, 2019)