U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27097511

Date: FEB. 13, 2024

Motions on Administrative Appeals Office Decision

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

The Petitioner, an accounting firm, sought to employ the Beneficiary as an accountant. The company requested his classification under the employment-based, third-preference (EB-3) immigrant visa category as a "professional." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This category allows U.S. businesses to sponsor noncitizens to permanently work in jobs requiring at least bachelor's degrees. *Id.*

After the filing's initial grant, the Director of the Texas Service Center revoked the petition's approval. The Director found that he erroneously approved the petition because the Petitioner did not demonstrate its required ability to pay the offered job's proffered wage or the validity of its job offer. On appeal, we withdrew the Director's decision and remanded the matter to determine whether the Beneficiary could participate in the revocation proceedings. *See Matter of H-A-S-Co.* (AAO Dec. 4, 2019); *see also Matter of V-S-G-, Inc.*, Adopted Decision 2017-06 (AAO Nov. 11, 2017) (allowing beneficiaries to participate in petition revocation proceedings if they qualify for "portability" under section 204(j) of the Act, 8 U.S.C. § 1154(j), and properly requested to port to new jobs).

On remand, the Director found the Beneficiary qualified to participate in the proceedings and mailed new notices of intent to revoke to both the Petitioner and the Beneficiary. The Petitioner did not respond. But the Director received the Beneficiary's timely reply, considered it, and again revoked the petition's approval. On certification from the Director, we also revoked the filing's approval. *See In Re: 23133591* (AAO Nov. 29, 2022). Like the Director, we concluded that the Beneficiary did not demonstrate the validity of the accompanying certification from the U.S. Department of Labor, as the record did not establish the Petitioner as a "successor-in-interest" of the business that filed the labor certification application. We also found that, contrary to the requirements of the offered job and the requested immigrant visa category, the Beneficiary did not demonstrate his possession of a bachelor's degree. *Id.*

The matter returns to us on the Beneficiary's combined motions to reopen and reconsider. *See* 8 C.F.R. § 103.5. He submits new evidence, claiming that it establishes the Petitioner as the labor certification employer's successor and his qualifications for the offered job and requested visa category.

The Beneficiary 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 the motion to reconsider does not meet regulatory requirements and that the motion to reopen does not establish the Petitioner as a successor to the labor certification employer. 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 prior decision misapplies law or U.S. Citizenship and Immigration Services (USCIS) policy based on the evidence at the time of the decision. 8 C.F.R. § 103.5(a)(3). We must limit our scope of review to our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). 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 that new evidence have the potential to change the outcome).

II. ANALYSIS

Beginning in 1981, the Petitioner's president/co-shareholder operated an accounting business as a sole proprietorship.[1] As a sole proprietor, he ran the business in his personal capacity, owning all its assets and owing all its liabilities. *See generally* 2 *USCIS Policy Manual* L.(5)(A), www.uscis.gov/policy-manual (discussing sole proprietorships in the context of L-1 nonimmigrant visa petitions). In [redacted] 2006, the president/co-shareholder created a corporation - the Petitioner - through which he intended the business to operate in the future. Unlike a sole proprietorship, a corporation is a legal entity distinct from its owners. *Matter of Silver Dragon Chinese Rest.*, 19 I&N Dec. 401, 403 (Comm'r 1986) (citation omitted).

The president/co-shareholder claims that he continued to run the accounting business as a sole proprietorship until the end of 2006, when the petitioning corporation purportedly acquired all the sole proprietor's business assets and liabilities. He says he filed the accompanying labor certification application in July 2006 as a sole proprietor because the recently created corporation had yet to begin operations. In July 2007 - after the labor application's certification in October 2006 and the Petitioner's purported acquisition of the business assets and liabilities in December 2006 - the petitioning corporation filed this petition. Thus, the labor certification identifies the Beneficiary's prospective employer as the sole proprietor, while the petition lists his future employer as the Petitioner, a different entity than the sole proprietor.

A. The Motion to Reconsider

Contrary to 8 C.F.R. § 103.5(a)(3), the Beneficiary's motion to reconsider does not contend that our prior decision misapplies law or policy based on the evidence at the time of the decision. Rather, the

[1] The president/co-shareholder contends that he and his spouse together owned and operated the unincorporated business. Copies of the couple's pre-2006 federal income tax returns list his spouse as the business's sole owner. The couple are co-shareholders of the petitioning corporation.

motion requests reversal of the petition's revocation based on new evidence. Because the filing does not meet applicable requirements, we must dismiss it. *See* 8 C.F.R. § 103.5(a)(4).

B. The Motion to Reopen

1. The Validity of the Accompanying Labor Certification

A petitioner can use another business's labor certification for the same noncitizen only if it establishes itself as the business's successor-in-interest. *See Matter of Dial Auto Shop, Inc.*, 19 I&N Dec. 481, 482-83 (Comm'r 1986). A successor must:

- Fully describe and document the ownership transfer to it from the predecessor;
- Demonstrate that, except for the employer's name, the job opportunity remains the same as originally offered on the labor certification; and
- Establish its eligibility for the requested benefit, including its and the predecessor's ability to continuously pay the proffered wage.

See generally 6 *USCIS Policy Manual* E.(3)(F).

On certification, we held that, contrary to *Dial Auto* and USCIS policy, the Beneficiary did not fully describe and document the purported ownership transfer between the labor certification employer and the Petitioner. On motion, the Beneficiary submits a copy of a "Blanket Conveyance, Bill of Sale and Assignment," dated December 31, 2006. The document indicates that, on that date, the Petitioner's president/co-shareholder - acting as the sole proprietor of the accounting business - transferred all his business assets and liabilities to the Petitioner.

In a new letter, the Petitioner's president/co-shareholder indicates that, when purportedly closing his business in 2012 and changing residence in 2019, he discarded most of his business documents. He states that, in 2023, at the Beneficiary's request:

> I searched thoroughly my files and was able to find my personal tax returns from 2004 to 2012 and tax return[s] of [the Petitioner] from 2006 to 2009, and 2011. In the 2006 tax return folder, I found a Blanket Conveyance, Bill of Sale and Assignment assigning all assets, rights and liability of [my unincorporated accounting business] to [the Petitioner] . . . It appears that I executed a supporting document[] to file 2006 [federal income tax returns for the Petitioner].

The Beneficiary contends that the document corroborates the purported transfer of assets and liabilities between the labor certification employer and the Petitioner.

The Beneficiary, however, has not sufficiently explained the 2023 discovery of the purported 2006 transaction document. In response to the Director's first NOIR in 2015, the Petitioner's president/co-shareholder indicated that he did not memorialize the transfer of his business assets and liabilities to the corporation in writing. He stated: "The [NOIR] requests to submit a contract of sale, mortgage closing statements, etc. as evidence that [the Petitioner] is a successor-in-interest, *but such documents were not executed*." (emphasis added). The Beneficiary has not explained why the president/co-

shareholder denied the existence of transactional documents in 2015. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a party to resolve inconsistencies with independent, objective evidence pointing to where the truth lies). This unresolved discrepancy casts doubt on the authenticity of the submitted document.

Also, the record shows that, upon the petition's filing in July 2007, it included a copy of the Petitioner's 2006 federal income tax return. The Petitioner's president/co-shareholder claims that he signed the transaction document only about six months before the petition's filing. The Beneficiary, however, has not explained why the president/co-shareholder did not find the transaction document "[i]n the 2006 tax return folder" and submit it as evidence of the company's claimed successorship at the time of the petition's filing. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies with independent, objective evidence).

As discussed in our prior decision, other evidence also casts doubts on the statements of the Petitioner's president/co-shareholder. Contrary to his testimony, the company's 2006 federal income tax return indicates the corporation's operation of an accounting business that year. Thus, the tax return suggests that the Petitioner conducted business at the time of the labor certification application's filing in July 2006 and before the company's purported acquisition of the assets and liabilities of the unincorporated accounting business at the end of 2006.

In explanation, the president/co-shareholder - who prepared and filed tax returns for a living - indicates that he intentionally filed a false 2006 tax return for the Petitioner. He states:

> Although [the Petitioner] was incorporated in 2006, it was not in operation in 2006. It started operations in 2007. I admit[] that I should have filed [a] tax return for [my accounting business in 2006] as a sole proprietorship . . . I wanted to save taxes and filed a 2006 [corporate tax return for the Petitioner] in 2007. However, [my unincorporated accounting business] was in operation and [the Petitioner] was dormant in 2006 when the labor certification was filed as established by the enclosed Blanket Conveyance, Bill of Sale and Assignment.

The Beneficiary also submits copies of purported 2006 income tax preparation agreements, which the Petitioner's president/co-shareholder also apparently found in 2023. The agreements consist of four documents that customers purportedly signed on separate occasions in March, October, November, and December of 2006. The agreements state that the president/co-shareholder would personally prepare the customers' income tax returns while doing business under the name of his sole proprietorship.

The Beneficiary, however, did not provide documentation from the customers' to corroborate their purported agreements and identities. The record also lacks evidence that the Beneficiary or the Petitioner's president/co-shareholder tried to obtain such documentation from the customers. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies with "independent objective evidence").

Also, the Petitioner's president/co-shareholder contends that the company continuously provided accounting services from January 2007 until his purported retirement in 2012. But online government

information indicates that the State of Georgia administratively dissolved the Petitioner in [redacted] 2008, suggesting that the company ceased operations or was winding up its activities before the petition's October 2008 approval. *See* Ga. Sec'y of State, Corps. Div., "Business Search," https://ecorp.sos.ga.gov/BusinessSearch. The online records do not indicate that the state reinstated the Petitioner's corporate status. *Id.* The record contains a copy of a $420 check that the president/co-shareholder purportedly sent to Georgia officials in February 2009 to reinstate the business's corporate status. The copy, however, does not show the check's reverse side or otherwise indicate whether Georgia deposited the payment. Nor does the record indicate that the president/co-shareholder or another representative of the Petitioner asked state officials why they did not reinstate the company's corporate status in exchange for the payment.

Copies of the Petitioner's federal income tax returns from 2007 through 2012 appear to support the statements of the company's president/co-shareholder. The tax returns indicate that, during that period, the company did not cease operations in [redacted] 2008, but continuously conducted business. As previously discussed, however, the president/shareholder states that the company's 2006 tax return is false. Thus, the false 2006 return casts doubt on the validity of the company's returns in other years. *See Matter of Ho*, 19 I&N Dec. at 591 ("Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.")

The Beneficiary has not sufficiently explained the recent discovery of the 2006 transaction document supporting the Petitioner's successor-in-interest claim. He also has not provided independent, corroborating evidence for other documentation submitted on motion. As the transaction document, the 2006 tax preparation agreements, and the president/co-shareholder's statements are unreliable, the Beneficiary has not established the Petitioner as the labor certification employer's successor and, thus, the labor certification's validity for this petition. We will therefore affirm the petition's denial.

2. The Educational Requirements of the Offered Job and Requested Visa Category

On certification, we held that, contrary to the requirements of the offered job and the requested immigrant visa category, the Beneficiary had not demonstrated his possession of a bachelor's degree. Specifically, we found that the record lacked copies of a letter and academic transcript from a South Korean university in their original language and evidence of the U.S. equivalency of the Beneficiary's purported South Korean degrees.

On motion, the Beneficiary again submits the copies of the university letter and transcript and states that the school issued the original documents in English. He does not support his statement, however, with independent, objective evidence that the South Korean university issues transcripts and letters in English. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies with "independent objective evidence").

The record also casts doubt on the two independent, professional evaluations of foreign credentials that the Beneficiary submitted as evidence of his degrees' U.S. equivalencies. The labor certification states that the offered job of accountant requires at least a U.S. bachelor's degree or a foreign equivalent degree in accounting, statistics, "or related areas." The copy of the Beneficiary's foreign

credentials state that the same South Korean university awarded him a bachelor's degree in applied statistics and a two-year master of business administration (MBA) degree.

The first evaluation concludes that the Beneficiary's South Korean MBA equates to a U.S. master of arts degree in accounting. The evaluation does not specify the U.S. equivalency of his three-year bachelor's degree. The other educational evaluation states that the Beneficiary's degrees "combined" equate to a U.S. bachelor's degree. The evaluation does not specify the equivalency's field of study.

Because the evaluations reach different conclusions, we consulted the Electronic Database of Global Education (EDGE), an online resource that federal courts have found to be a reliable source of foreign educational equivalencies.[2] EDGE indicates that, in South Korea, bachelor's degrees usually require four years of college or university studies and two-year master's degrees usually equate to U.S. master's degrees.

Based on the EDGE information, the Beneficiary's master's degree appears to equate to a U.S. master's degree. But the record does not explain why he studied only three years to obtain a bachelor's degree. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977) (stating that a U.S. baccalaureate usually requires four years of study).

Without explanation of the Beneficiary's three-year bachelor's degree or resolution of the evaluations' discrepancies, the record does not establish that he has a bachelor's degree as the offered job and requested immigrant visa category require. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies with "independent objective evidence"). We will therefore affirm the petition's denial on this ground.

III. CONCLUSION

The motion to reconsider does not meet applicable requirements. The motion to reopen does not establish the Petitioner as a successor to the labor certification employer or demonstrate the Beneficiary's educational qualifications for the offered job or the requested immigrant visa category.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[2] EDGE was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), a nonprofit organization representing more than 12,500 admissions professionals in more than 40 countries); *see, e.g., Viraj LLC v U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (describing EDGE as "a respected source of information").