U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF R-T-M-, INC.

DATE: FEB. 23, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a travel agency, seeks to employ the Beneficiary as a manager. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based 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 initially approved the petition. The Director of the Nebraska Service Center subsequently revoked approval of the petition after determining that the Petitioner had committed fraud or misrepresentation of material facts with respect to its work address and the familial relationship between the Beneficiary and the Petitioner's owner/corporate officers. Based on the finding of fraud or willful misrepresentation of a material fact, the Director invalidated the labor certification. The Director also found that the Petitioner had not established its continuing ability to pay the Beneficiary's proffered wage from the priority date onward. We dismissed the subsequent appeal. The Petitioner subsequently filed several motions to reopen and reconsider. In our most recent decision, we denied the Petitioner's filing because it did not meet the requirements of a motion to reopen or a motion to reconsider.

The matter is again before us on a motion to reopen and a motion to reconsider. On motion, the Petitioner provides previously submitted evidence and asserts that it has submitted sufficient evidence to establish its ability to pay the proffered wage, and that we should reverse our finding that that the Petitioner made a fraudulent misrepresentation of a material fact. Upon review, we will deny both motions.

## I. LAW

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." A motion to reconsider must establish that, based on the record at that time, our prior decision misapplied law or policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must also be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of United States Citizenship and Immigration Services (USCIS) or

Department of Homeland Security policy. We may grant motions that satisfy these requirements and demonstrate eligibility for the requested immigration benefit.

## II. ANALYSIS

### A. Motion to Reopen

On motion to reopen, the Petitioner asserts that USCIS did not consider the substantial evidence demonstrating that it has the continuing ability to pay the proffered wage to the Beneficiary from the petition's November 2, 2005 priority date. The Petitioner submits previously provided evidence in the form of the Beneficiary's Internal Revenue Service Forms W-2, Wage and Tax Statement, for 2010, and the Petitioner's income tax returns for 2005 to 2011. We have considered and addressed this evidence within the context of our prior decisions and fully explained why it is not sufficient to demonstrate the Petitioner's ability to pay. The resubmitted documents do not constitute new facts for purposes of a motion to reopen.

The Petitioner further states that it did not commit fraud or a material misrepresentation of a material fact when it completed the labor certification but was instead "the victim of terrible legal representation" by a prior attorney, and submits a 2012 statement from the Beneficiary in which he claimed that he relied on the advice of the prior attorney of record when setting up the Petitioning entity. However, the Petitioner has already raised this claim and provided the 2012 statement in a prior motion, and we addressed this in our prior decisions. To the extent that the Petitioner is suggesting that contradictory, and therefore derogatory, information is the fault of a prior attorney, this assertion and the related statement from the Beneficiary do not satisfy the requirements for establishing a claim of ineffective assistance of counsel. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988) (requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

We will therefore deny the motion to reopen because the Petitioner has not submitted new facts supported by documentary evidence and has not demonstrated eligibility for the benefit sought.

### B. Motion to Reconsider

On motion to reconsider, the Petitioner contends that we did not consider its ability to pay the proffered wage based on a "Current Ratio Analysis" of its total current assets to total current liabilities in 2008, and cites to a transcript of a 1994 teleconference that allegedly took place at the Eastern Service Center (now the USCIS Vermont Service Center). Unpublished agency decisions and legal opinions are not binding, even when they are published in private publications or widely circulated. *R.L. Inv. Ltd. Partners v. INS*, 86 F. Supp. 2d 1014, 1022 (D. Haw. 2000), *aff'd*, 273 F.3d 874 (9th Cir. 2001). The Petitioner has not cited to any USCIS guidance in the USCIS Policy Manual or the relevant portion of the Adjudicator's Field Manual requiring USCIS adjudicators to

apply a current ratio analysis in the manner the Petitioner suggests in determining its ability to pay the proffered wage.[1] Regardless, we did not confine the analysis of the Petitioner's ability to pay to a single factor in our prior decisions. Rather, we also considered the overall magnitude of Petitioner's business activities in determining that it had not established its continuing ability to pay from the priority date based on a totality of the circumstances. *See Matter of Sonegawa* 12 I&N Dec. 612 (Reg'l Comm'r) (providing an analytical framework for review of a broad range of business activities when considering ability to pay). Accordingly, the Petitioner has not established on motion that our prior decision was based on an incorrect application of law or policy. We therefore will deny the motion to reconsider.

## III. CONCLUSION

The Petitioner has not shown proper cause for reopening or reconsideration of our prior decision, nor has the Petitioner demonstrated eligibility for the benefit sought.

**ORDER:** The motion to reopen is denied.

**FURTHER ORDER:** The motion to reconsider is denied.

Cite as *Matter of R-T-M-, Inc.*, ID# 1014941 (AAO Feb. 23, 2018)

[1] *See* Immigration Handbooks, Manuals and Guidance at https://www.uscis.gov/laws/immigration-handbooks-manuals-and-guidance (last visited on Feb. 15, 2018).