U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 01518695

DATE: FEB. 23, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for an Alien Worker

The Petitioner, a limited-service restaurant business, seeks to employ the Beneficiary as a food service worker. It requests classification for the Beneficiary as an "other worker" under the third preference immigrant category. 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" immigrant classification allows a U.S. employer to sponsor for lawful permanent resident status a foreign national who is capable of performing unskilled labor that requires less than two years of training or experience and is not of a temporary or seasonal nature.

The Director of the Texas Service Center denied the petition on the ground that the Petitioner did not establish that it will employ the Beneficiary as a permanent full-time employee, and therefore failed to establish a *bona fide* job offer.

The Petitioner filed a motion to reconsider and submitted a brief.

A motion to reconsider must establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigrations Services (USCIS) policy and that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3).

The Director mistakenly treated the Petitioner's filing as a motion to reopen, instead of a motion to reconsider. The Director quoted the regulation at 8 C.F.R. § 103.5(a)(2) which states:

> *Requirements for motion to reopen.* A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

The Director stated that the evidence submitted with the motion did not establish that the requirements of a motion to reopen had been met, and dismissed the motion on that basis.

The Petitioner filed an appeal, along with a supplemental brief, requesting that we vacate the Director's decisions and either remand the matter for further consideration by the Director or approve the petition.

Since the Director did not properly consider the Petitioner's motion to reconsider, we will remand the matter for consideration of that motion in accordance with the provisions of 8 C.F.R. § 103.5(a)(3). The Director shall consider both the brief submitted in support of that motion and the brief submitted in support of the appeal. The Director shall then issue a new decision on the motion to reconsider.

ORDER: The Director's decision on the Petitioner's motion to reconsider is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.