U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-C-E-, INC.

DATE: JAN. 11, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an electrical contractor, seeks to employ the Beneficiary as a low voltage system installer. It requests classification of the Beneficiary as a skilled worker. *See* 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 Nebraska Service Center denied the petition because the offered position does not require at least two years of experience or training as required for classification as a skilled worker. The Petitioner appealed the matter to us. We affirmed the Director's decision and denied a subsequent motion to reopen.

On a motion to reconsider, the Petitioner submits a brief and asserts that the Beneficiary qualifies as a skilled worker based on his two years of relevant post-secondary education.

Upon review, we will deny the motion to reconsider.

I. MOTION REQUIREMENTS

A petitioner must meet the formal filing requirements of a motion and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1). A motion to reconsider must establish that our 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. 8 C.F.R. § 103.5(a)(3).

A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security (DHS) policy.

II. LAW AND ANALYSIS

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), defines "skilled workers" as "qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States."

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) states that "[t]he minimum requirements for [the skilled worker] classification are at least two years of training or experience." Relevant post-secondary education may be considered as training. 8 C.F.R. § 204.5(l)(2). The determination of whether the offered position is for a skilled worker is based on the requirements of position as set forth on the labor certification. 8 C.F.R. § 204.5(l)(4).

In this case, section H.4 of the labor certification states as the primary requirement that an applicant must have completed vocational high school with a major field of study in electro-technic or any related field. We held in our prior decisions that the primary requirement of the labor certification does not require a minimum of at least two years of training or experience. Although Section H.8 states that two years of related experience is acceptable as an "alternate combination of education and experience," because the labor certification permits an individual to qualify for the offered position with less than two years of training or experience, the petition cannot be approved in the skilled worked category. This ground of ineligibility was discussed at length in our appellate decision and in the subsequent motion denial.

On its current motion, the Petitioner, through counsel, asserts that it provided evidence of the Beneficiary's two years of relevant post-secondary education in its motion to reopen. However, our prior decision was not based on the Beneficiary's qualifications, but rather found that the labor certification did not require a minimum of two years of training or experience, as required for the position to be eligible for skilled worker classification. The Petitioner does not address this ground of ineligibility on motion to reconsider and has not shown that our prior finding was incorrect based on the evidence of record. Further, the motion to reconsider is not supported by any pertinent precedent or adopted decisions, or a statement of USCIS or DHS policy.

III. CONCLUSION

The Petitioner has not established that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record, nor has the Petitioner demonstrated eligibility for the requested immigration benefit.

ORDER: The motion to reconsider is denied.

Cite as *Matter of I-C-E-, Inc.*, ID# 906746 (AAO Jan. 11, 2018)