U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-T-O-W-, INC.

DATE: JAN. 12, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a drycleaner, seeks to employ the Beneficiary as a bookkeeper. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant category. *See* Immigration and Nationality 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 later concluded that the Petitioner had not established that the Beneficiary possessed the employment experience required by the job offer and that it properly conducted its recruitment. The Director also concluded that the United States Department of Labor, Office of Inspector General, Office of Investigations - Labor Racketeering and Fraud had conducted interviews and had "found fraud." Therefore, the Director revoked the approval of the petition.

The Petitioner appealed the Director's revocation, and we dismissed the appeal. We also dismissed a subsequent motion to reconsider because it was not supported by any precedent decisions and did not establish that we based our appellate decision on an incorrect application of law or Service policy. 8 C.F.R. § 103.5(a)(3).

The matter is now before us on motion to reopen. The entity that filed the motion asserts that the Beneficiary possessed the required employment experience as of the priority date, that it conducted the recruitment properly, and that it had established its ability to pay the proffered wage. The motion includes a statement, tax records, and copies of previously submitted job advertisements.

Upon review, we will deny the motion.

I. LAW

Appeals and motions may only be filed by an affected party. In most visa petition cases, the affected party is limited to the petitioner. 8 C.F.R. § 103.3(a)(1)(iii)(B) ("For purposes of [appeals, motions, and decisions certified for review], affected party . . . means the person or entity with legal standing in a proceeding.")

To merit reopening, the affected party must meet the formal filing requirements, such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, within 30 days of the decision that the motion seeks to reopen. The motion also must be signed by the affected party or representative of record, and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1). A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be denied. *See* 8 C.F.R. § 103.4(a)(4).

II. ANALYSIS

We will deny the motion to reopen because it was not filed by an affected party or representative of record. In this case, F-T-O-W-, Inc. filed the immigrant visa petition. On the petition, F-T-O-W-, Inc. claimed to have started doing business in 1985 and lists a federal tax employer identification number (EIN) ending in [redacted] Although the motion is signed by an individual who claims to be the new owner of the petitioning entity, the record does not show that he is affiliated with the Petitioner, and he instead appears to own an unrelated company. The 2012 tax return that he submits is for an entity named F-T-C, Inc. that was incorporated on January 1, 2012, and has a different EIN ending in [redacted] Moreover, a review of the Massachusetts state database not only confirms that the two entities are separate but that the Petitioner voluntarily dissolved on January 27, 2012, and no longer exits. F-T-C, Inc. does not claim to be, nor does the record, show that it is a successor-in-interest to the Petitioner. Instead, it appears to be a different company that simply operates from the address that used to house the Petitioner. Consequently, the motion must be denied because it was not filed by the Petitioner but was instead filed by a separate entity that is not recognized as an affected party in these proceedings. 8 C.F.R. § 103.4(a)(4).

Even if an affected party had filed this motion, we would deny it because it otherwise does not meet the requirements of a motion to reopen. The official having jurisdiction in a motion is the official who made the latest decision in the proceeding. 8 C.F.R. § 103.5(a)(1)(ii). Therefore, for the purposes of this motion to reopen, the scope of our review is limited to the latest decision, which was our decision dismissing the prior motion based on its failure to meet the requirements of a motion to reconsider. The new motion to reopen discusses the merits of the underlying case; however, it does not address our prior decision on the motion to reconsider.

Consequently, because the motion before us does not does not state new facts concerning the prior motion decision and is not supported by affidavits or other evidence addressing our prior decision on

the motion to reconsider, it does not meet the requirements for a motion to reopen and must be denied for this additional reason.

III. CONCLUSION

For the reasons discussed, this motion must be denied because it is not filed by an affected party and otherwise does not meet the requirements of a motion to reopen.

ORDER: The motion to reopen is denied.

Cite as *Matter of F-T-O-W-, Inc.*, ID# 288323 (AAO Jan. 12, 2018)