U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31763405

Date: JULY 5, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, the operator of a convenience store/gas station, sought to employ the Beneficiary as a store manager. The company requested his classification under the employment-based, third-preference (EB-3) immigrant visa category 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). Businesses may sponsor noncitizens for permanent residence in this category to work in jobs requiring at least two years of training or experience. *Id.*

After initially granting the filing, the Director of the Texas Service Center revoked the petition's approval and dismissed the Beneficiary's two following combined motions to reopen and reconsider.[1] Dismissing the Beneficiary's appeal, we affirmed the Director's conclusions that, at the time of the petition's filing, the Petitioner had not demonstrated its ability to pay the offered job's proffered wage or the Beneficiary's satisfaction of the job's minimum experience requirements. *See In Re: 11198696* (AAO July 12, 2022). We reserved decision on the Director's finding that the company did not establish the Beneficiary's intent to work in the offered job. *Id.*

After deciding the appeal, we dismissed the Beneficiary's combined motions to reopen and reconsider. *See In Re: 29060642* (AAO Dec. 7, 2023). We found that the motion to reopen did not meet regulatory requirements. We found that the motion to reconsider did not demonstrate our misapplication of law or policy, or the Beneficiary's eligibility for the requested benefit. *Id.*

The matter returns to us on the Beneficiary's combined motions to reopen and reconsider. He 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 reopen does not meet regulatory requirements. We also find that the motion to reconsider does not demonstrate our misapplication of law or policy, or the Beneficiary's eligibility for the requested benefit. We will therefore dismiss the motions.

[1] The Beneficiary may participate in these revocation proceedings because he qualified to "port" to another job under section 204(j) of the Act, 8 U.S.C. § 1154(j), and properly requested to port. *See Matter of V-S-G- Inc.*, Adopted Decision 2017-06, *14 (AAO Nov. 11, 2017).

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 the prior decision misapplied law or U.S. Citizenship and Immigration Services (USCIS) policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). The scope of our review on motion is limited to "the prior decision" or "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

II. ANALYSIS

A. The Motion to Reopen

The Beneficiary's motion to reopen contains copies of previously submitted materials. The motion does not "state the new facts to be provided in the reopened proceeding." 8 C.F.R. § 103.5(a)(2). We must dismiss "[a] motion that does not meet applicable requirements." 8 C.F.R. § 103.5(a)(4). We must therefore dismiss the Beneficiary's motion to reopen.

B. The Motion to Reconsider

In the motion to reconsider, the Beneficiary contends that he and the Petitioner demonstrated: the company's ability to pay the offered job's proffered wage; his possession of the minimum experience requirements; and his intent to work for the Petitioner in the job. Our prior decision, however, did not address these arguments. Rather, our prior decision dismissed the prior motion to reopen because it lacked new evidence or facts. *See* 8 C.F.R. § 103.5(a)(2). Our prior decision dismissed the prior motion to reconsider because contrary to the Beneficiary's contention, neither law nor policy required us to defer to the petition's prior approval. As the Beneficiary's arguments exceed the scope of our review, we cannot consider them. *See* 8 C.F.R. § 103.5(a)(1)(i), (ii) (limiting the scope of our review on motion to "the prior decision" or "the latest decision in the proceeding").

Also, the motion's contention that the Beneficiary's eligibility to port bars the petition's revocation does not persuade us. Under the portability provision, a petition for a noncitizen whose application for adjustment of status has remained unadjudicated for at least 180 days "shall remain valid with respect to a new job if the individual changes jobs or employers if the new job is in the same or similar occupational classification as the job for which the petition was filed." Section 204(j) of the Act. The provision states that the petition of a portability-eligible beneficiary "shall remain valid." But the filing remains valid only "with respect to a new job." *Id.* The provision does not state "that the petition shall forevermore remain valid. More to the point, in order for a petition to 'remain' valid, it must have been valid from the start." *Herrera v. USCIS*, 571 F.3d 881, 887 (9th Cir. 2009); *see also Matter of Al Wazzan*, 25 I&N Dec. 359, 367 (AAO 2010) (holding that, to be "valid" for portability purposes, a petition must have been filed for a noncitizen "entitled" to the requested classification).

The Beneficiary's residence does not lie within the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit. Thus, the *Herrera* decision does not bind us in this matter. Nevertheless, we find the decisions persuasive and consistent with our precedent decision in *Al Wazzan*. By affirming the revocation of the petition's approval, we found the Petitioner's filing invalid from the start. Thus,

contrary to the Beneficiary's contention, the petition cannot "remain" valid under the portability provision. The Beneficiary's eligibility to port therefore does not bar the filing's revocation.

For the foregoing reasons, the Beneficiary's motion to reconsider does not demonstrate our prior misapplication of law or policy, or establish his eligibility for the requested benefit. We will therefore dismiss the motion.

III. CONCLUSION

The motion to reopen does not meet regulatory requirements. The motion to reconsider does not establish our prior misapplication of law or policy, or the Beneficiary's eligibility for the requested benefit. We will therefore dismiss the motions.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.