U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12126126

DATE: JULY 23, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for a Skilled Worker

The Petitioner, a travel agency, seeks to employ the Beneficiary as a manager of travel and tours. It requests skilled worker classification for the Beneficiary under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based "EB-3" 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 petition was initially approved by the Director of the Texas Service Center on May 10, 2006. The approval was subsequently revoked on November 30, 2009, by the Director of the Nebraska Service Center, who found that the Petitioner committed fraud or misrepresented 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 and revoked the approval of the petition because it was not supported by a valid labor certification as required by 8 C.F.R. § 204.5(l)(3)(i). The Director also found that the Petitioner did not establish its continuing ability to pay the proffered wage from the priority date of November 2, 2005, onward.

The Petitioner filed an appeal, which we dismissed. The Petitioner has since then filed eleven motions to reopen and reconsider, ten of which we have dismissed and the latest of which is currently before us.

Upon review, we will dismiss the combined motions.

I. MOTION TO REOPEN

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In prior decisions we found that the Petitioner had not established its ability to pay the proffered wage in the years 2006-2008. In the current motion the Petitioner cites previously submitted evidence[1] relating to those years which has already been considered in our previous decisions. No

[1] The Petitioner incorrectly asserts that its net income was $64,950 in 2008, which would have exceeded the proffered wage. This claim is not correct, however, since $64,950 was the Petitioner's total income in 2008, as recorded on page 1, line 11, of its 2008 federal income tax return (Form 1120), whereas its net income, recorded at page 1, line 28, was only $5,724. Net income, not total income, can establish a petitioner's ability to pay the proffered wage in a given year.

new facts are submitted with the current motion, nor any new documentation related to the Petitioner's ability to pay the proffered wage in the years 2006-2008. The Petitioner also reiterates previous assertions that no fraud or willful misrepresentation of a material fact was committed with regard to the familial relationship between itself and the Beneficiary. On this issue too, however, the Petitioner states no new facts and submits no new evidence.

Accordingly, the Petitioner has not shown proper cause for reopening the proceedings with regard to its continuing ability to pay the proffered wage from the priority date of the petition until the date of revocation and with regard to the finding of fraud or willful misrepresentation of a material fact in the labor certification.

II. MOTION TO RECONSIDER

A motion to reconsider must establish that our previous decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence of record at the time of the decision. 8 C.F.R. § 103.5(a)(3). The Petitioner does not identify any incorrect application of law or policy in our prior decisions with regard to the Petitioner's ability to pay the proffered wage during the years 2006-2008. The Petitioner once again urges us to consider the totality of its circumstances, in accordance with *Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967), but we have already done so in prior decisions. The Petitioner reiterates previous assertions that it did not engage in fraud or willful misrepresentation of any material fact in the labor certification. These assertions were thoroughly discussed in our prior decisions, however, and the Petitioner does not identify any incorrect application of law or policy by us in those decisions.

Accordingly, the Petitioner has not shown proper cause for reconsideration of our previous decisions with regard to the Petitioner's continuing ability to pay the proffered wage from the priority date of the petition until the date of revocation and with regard to the finding of fraud or willful misrepresentation of a material fact in the labor certification.

III. CONCLUSION

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

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.