U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-M-A-S-, INC.

DATE: JUNE 14, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a software development company, seeks to employ the Beneficiary as an accountant. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. Immigration and Nationality Act, section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Texas Service Center initially approved the petition. The Director subsequently revoked the petition's approval, concluding that the job offer was not *bona fide* because the Beneficiary was the brother of a shareholder of an affiliate of the Petitioner; and that inconsistencies in evidence relating to the Beneficiary's prior experience had not been resolved with independent, objective evidence. The Director also determined that the Petitioner and the Beneficiary made willful misrepresentations of material facts on the labor certification, and he invalidated the labor certification. We summarily dismissed a subsequent appeal because the Petitioner failed to identify any erroneous conclusion of law or statement of fact in the Director's decision.[1]

On motion, the Petitioner submits additional evidence and asserts that the Petitioner was not affiliated with an entity owned by the Beneficiary's brother when the labor certification was filed. The Petitioner also states that the letters submitted in support of the Beneficiary's experience were not entirely inconsistent, and that both letters detailed the Beneficiary's qualifying experience for the offered job. Upon review, we will deny the motion to reopen and deny the motion to reconsider.

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 reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). On motion, the Petitioner states no new facts and provides no evidence demonstrating that it did, in fact, identify an error on appeal.[2] Thus, the

[1] We may summarily dismiss an appeal when the petitioner fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

[2] When a motion is filed, the petitioner may seek reopening or reconsideration of the immediate prior decision. *See* 8 C.F.R. § 103.3(a)(1). The immediate prior decision in this case is our summary dismissal of the appeal. However, the evidence submitted by the Petitioner on motion relates to the Director's notice of revocation, and not our decision on appeal.

Petitioner has not shown proper cause to reopen the proceeding, and the motion to reopen will be denied.

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 or Department of Homeland Security policy. On motion, the Petitioner has not demonstrated that our summary dismissal was based on an incorrect application of law or policy based on the record at the time of our decision. Therefore, the Petitioner has not shown proper cause for us to reconsider the proceeding, and the motion to reconsider will be denied.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of A-M-A-S-, Inc.*, ID# 1268448 (AAO June 14, 2018)