U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-N-M-C-M-, INC.

DATE: JUNE 23, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a garment manufacturer, seeks to employ the Beneficiary as a sewing machine operator. It requests his classification as an unskilled worker under the third-preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). This category allows a U.S. business to sponsor a foreign national with less than two years of training or experience for lawful permanent resident status.

The Director of the Texas Service Center denied the petition. The Director concluded that the Beneficiary married in a prior attempt to evade immigration laws, barring the petition's approval.

On appeal, we affirmed the Director's decision. We also found that the record did not establish the Petitioner's ability to pay the proffered wage, or the Beneficiary's possession of the minimum experience required for the offered position. *See Matter of T-N-M-C-M-, Inc.*, ID# 77808 (AAO Nov. 15, 2016).

On motion to reopen and motion to reconsider, the Petitioner resubmits evidence and asserts the *bona fides* of the Beneficiary's prior marriage, its ability to pay the proffered wage, and his qualifying experience.

Upon review, we will deny the motion to reopen and the motion to reconsider.

I. MOTION TO REOPEN

A motion to reopen must contain documentary evidence of new facts. 8 C.F.R. § 103.5(a)(2). Here, documentary evidence accompanies the Petitioner's submission, but the record already contains those documents. Thus, contrary to motion requirements, the evidence does not support new facts. We will therefore deny the motion to reopen.

II. MOTION TO RECONSIDER

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 policy. For the following reasons, the Petitioner's motion to reconsider does not establish our incorrect application of law or policy.

A. Marriage Fraud Bar

In our prior decision, we found substantial and probative evidence of marriage fraud based on the statement of the Beneficiary's former U.S. citizen spouse that he "only married me for a green card." If a beneficiary married in a prior attempt to evade immigration laws, USCIS cannot approve a petition on his or her behalf. Section 204(c) of the Act, 8 U.S.C. § 1154(c). To trigger this provision, a record must contain "substantial and probative evidence" of marriage fraud. 8 C.F.R. § 204.2(a)(1)(ii). A petitioner overcomes this "marriage fraud bar" by establishing, by a preponderance of evidence, the *bona fides* of the marriage in question. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983). A marriage is *bona fide* if, as of the union, the couple intended to establish a life together. *Id.*

As was discussed at length in our prior decision, the record lacks sufficient, objective evidence of the couple's intention, as of the marriage, to establish a life together. On motion, the Petitioner renews arguments previously made on appeal asserting that the evidence establishes the *bona fides* of the marriage. However, as was previously detailed, the Beneficiary's affidavit lacks details of the couple's courtship and describes their relationship in vague terms, affidavits from his relatives and friends are brief and virtually identical, photographs of the couple appear to reflect only two days in which they were together, and sales receipts in the name of the Beneficiary's spouse do not support his claimed purchase of jewelry for her. Thus, contrary to the Petitioner's assertions on motion, the record does not establish the *bona fides* of the marriage

B. The Petitioner's Ability to Pay the Proffered Wage

The Petitioner also asserts its ability to pay the annual proffered wage of $24,050 from the petition's priority date of March 3, 2011, onward.[1] *See* 8 C.F.R. § 204.5(g)(2) (requiring a petitioner to demonstrate its continuing ability to pay a proffered wage, from a petition's priority date until a beneficiary obtains lawful permanent residence).

As we stated in our appellate decision, the Petitioner established its ability to pay the proffered wage in 2011 and 2012 based payments to the Beneficiary. But the record does not establish its ability to pay thereafter. Copies of the Petitioner's federal income tax returns in following years are incomplete and thus do not establish its possession of annual amounts of net income or net current assets sufficient to pay the proffered wage. Also, the Petitioner did not provide information to demonstrate its ability to pay the combined proffered wages of this and its two other petitions that

[1] The priority date of a petition accompanied by a labor certification is the date the Department of Labor accepted the labor application for processing. 8 C.F.R. § 204.5(d).

remained pending after this petition's priority date. Thus, contrary to the Petitioner's assertions on motion, the record does not establish its continuing ability to pay the proffered wage from the petition's priority date onward.

C. The Beneficiary's Qualifying Experience

The record also does not establish, as the labor certification requires, the Beneficiary's possession of at least three months' experience in the offered position of sewing machine operator. *See* 8 C.F.R. § 204.5(l)(3)(ii)(D) (requiring evidence of a beneficiary's qualifying experience to accompany a petition for an unskilled worker).

The Petitioner's motion does not overcome the discrepancies described in our previous decision concerning the Beneficiary's claimed employment experience. Although the Petitioner discusses previously submitted evidence, it does not explain the statements of a man who identified himself to USCIS officers in India as the sole proprietor of the Beneficiary's claimed former employer and told the officers that the business had never employed anyone with the Beneficiary's name. The Petitioner asserts that the man did not work at the business during the Beneficiary's tenure there. The record, however, does not explain the man's testimony and supporting evidence identifying him as the business's sole proprietor since before the Beneficiary's tenure. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record by independent, objective evidence pointing to where the truth lies). In addition, the record does not establish the Beneficiary's ability, as specified on the labor certification, "to operate all types of sewing machines used by the employer." Although the Petitioner's manager asserted that the Beneficiary had this ability before the company hired him, the record lacks sufficient, independent evidence that he met this requirement by the petition's priority date. Thus, the record on motion does not establish the Beneficiary's possession of the minimum experience required for the offered position.

On motion, the Petitioner reiterates arguments previously made on appeal, but does not support its claims with any pertinent precedent or adopted decision, statutory or regulatory provision, or statement of USCIS or Department of Homeland Security policy to establish that our prior decision was based on the incorrect application of law or policy. As such, the motion to reconsider must be denied.

III. CONCLUSION

The Petitioner's motions do not state new facts, establish our incorrect application of law or policy, or demonstrate eligibility for the benefit sought. We will therefore affirm our appellate decision.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of T-N-M-C-M-, Inc.*, ID# 316470 (AAO June 23, 2017)