U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31388927

Date: JUNE 25, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a travel agency, seeks to employ the Beneficiary as a travel and tours manager. The company requests 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). This category allows a U.S. business to sponsor a noncitizen for permanent residence to work in a job requiring at least two years of training or experience. *Id.*

After initially granting the filing, the Director of the Nebraska Service Center revoked the petition's approval. The Director concluded that the Petitioner willfully concealed material facts on the accompanying certification from the U.S. Department of Labor (DOL) and did not demonstrate its ability to pay the offered job's proffered wage. We affirmed the revocation on appeal and dismissed the Petitioner's 15 following combined motions to reopen and reconsider. *See In Re: 28841186* (AAO Oct. 30, 2023).

The matter returns to us on the Petitioner's combined motions to reopen and reconsider. In revocation proceedings, the company bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Ho,* 19 I&N Dec. 582, 589 (BIA 1988). Upon review, we conclude that neither motion meets regulatory requirements. We will therefore dismiss them.

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

II. ANALYSIS

In our prior decision, we dismissed the Petitioner's motion to reopen, finding that, contrary to 8 C.F.R. § 103.5(a)(2), it did not state "new facts." We dismissed the company's motion to reconsider because we previously rejected its arguments. *See, e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("[A] motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision.")

A. Motion to Reopen

The Petitioner's new motion to reopen contains copies of the company's federal and state tax returns for 2005 through 2011 and a copy of an article about "the Great Recession" of 2008. The record, however, already contains these materials. Thus, the motion does not state "new facts." *See* 8 C.F.R. § 103.5(a)(2).

Also, the motion does not address our prior decision's dismissal grounds. *See* 8 C.F.R. § 103.5(a)(1)(ii) (limiting a motion's scope to "the prior decision" and "the latest decision in the proceeding"). The Petitioner argues that the accompanying evidence demonstrates its ability to pay the proffered wage at the time of the petition's approval. As previously indicated, however, our prior decision dismissed the company's motions because they lacked new facts or arguments. The Petitioner's new motion does not assert that those conclusions are factually or legally incorrect.

The Petitioner's motion to reopen does not meet regulatory requirements. We will therefore dismiss it. *See* 8 C.F.R. § 103.5(a)(4) (requiring dismissal of a motion "that does not meet applicable requirements").

B. Motion to Reconsider

Like the Petitioner's motion to reopen, its motion to reconsider does not address our prior decision's dismissal grounds. *See* 8 C.F.R. § 103.5(a)(1)(ii). Rather, the motion contends that we misanalysed ability-to-pay factors under *Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967). The motion also asserts our error in finding that the Petitioner's concealment on the labor certification of the sibling relationship between the company's president and the Beneficiary was willful or material. As previous indicated, we did not dismiss the company's prior combined motions on either of those grounds.

The Petitioner's motion to consider does not meet regulatory requirements. *See* 8 C.F.R. § 103.5(a)(1)(ii). We will therefore also dismiss this motion. *See* 8 C.F.R. § 103.5(a)(4).[1]

[1] Online government information indicates state suspension of the Petitioner's permission to conduct business as a corporation. *See* Cal. Sec'y of State, "Business Search," https://bizfileonline.sos.ca.gov/search/business. The suspension casts doubt on the company's continued operations and its intent to employ the Beneficiary in the offered job. *See* section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F) (requiring a petitioner to be "desiring and intending to employ [a noncitizen] within the United States").

III. CONCLUSION

The Petitioner's combined motions do not meet regulatory requirements. We will therefore affirm our appellate dismissal.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.