U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-D- LTD.

DATE: MAR. 21. 2019

MOTIONS ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a restaurant operator, seeks to employ the Beneficiary as a cook. It requests his classification under the third-preference, immigrant category as an "other worker." Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). This employment-based, 'EB-3" category allows a U.S. business to sponsor a foreign national for lawful permanent resident status to work in a job requiring less than two years of training or experience.

After the Director of the Texas Service Center denied the petition, we dismissed the Petitioner's appeal. *See Matter of C-D- Ltd.*, ID# 813083 (AAO Jan. 3, 2018). We affirmed the Director's conclusion that the Petitioner did not demonstrate its required ability to pay the position's proffered wage. We also found that the Petitioner did not establish the Beneficiary's qualifying experience for the offered position.

The matter is before us again on the Petitioner's motions to reopen and reconsider. The Petitioner asserts that the longevity of its business and its amounts of cash, net income, and net current assets demonstrate its ability to pay the proffered wage. It also submits an amended certificate from the Beneficiary's purported former employer in support of the Beneficiary's claimed experience.

Upon review, we will deny the motions.

I. MOTION CRITERIA

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 establish that a decision misapplied law or policy based on the evidence at that time. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must also cite 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. We may grant motions that meet these requirements and establish a petition's approvability.

II. MOTION TO RECONSIDER

Our appellate decision found that the Petitioner established its ability to pay the position's annual proffered wage of $26,624 in 2016, but not in 2015, the year of the petition's priority date. *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). On motion, the Petitioner asserts that its previously submitted federal income tax returns reflect sufficient net current assets and cash to pay the proffered wage in 2015. In fact, the brief accompanying the motion repeats the arguments previously made on appeal concerning the Petitioner's ability to pay. These arguments were discussed at length in the appellate decision. Contrary to 8 C.F.R. § 103.5(a)(3), the Petitioner does not cite legal authority demonstrating that we erred in finding insufficient evidence of the company's continuing ability to pay the proffered wage of the offered position. We will therefore affirm our prior finding on this ground.

III. MOTION TO REOPEN

In our appellate decision, we also found that the Petitioner did not establish the Beneficiary's possession of the offered position's minimum requirement of one year of experience in the job offered. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977) (requiring a petitioner to demonstrate a beneficiary's possession of all job requirements by a petition's priority date). The Beneficiary attested that he worked full-time as a cook at a restaurant in Mongolia from June 1998 to December 2003. USCIS records indicate his presence in the United States since January 2004. A certificate from the Beneficiary's purported former employer, however, lists the Beneficiary's full-time employment from June 1998 to December *2004*. *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).

On motion, the Petitioner submits a copy of an amended certificate from the foreign restaurant indicating that the first document contained a typographical error in the Beneficiary's end date of employment. Consistent with the Beneficiary's attestation, the new certificate states his employment from June 1998 to December 2003. The record, however, still does not establish the Beneficiary's claimed qualifying experience. The supervisor who signed the employment certificates has the same name as a stepson of the Beneficiary listed on the Form I-140, Immigrant Petitioner for Alien Worker. The apparent family relationship between the Beneficiary and the certificates' signatory casts doubt on their reliability, especially when viewed in light of the previous inconsistencies concerning the Beneficiary's work experience. As the record lacks independent, objective evidence of the Beneficiary's claimed employment - such as copies of government or contemporaneous business records - the record does not establish the Beneficiary's possession of the minimum experience required for the offered position. We acknowledge that the Petitioner has submitted some new evidence; however, for the reasons explained above, we find that the Petitioner has not demonstrated eligibility for the benefit sought.

IV. CONCLUSION

The Petitioner has not shown proper cause for reopening or reconsideration and has not overcome the grounds for dismissal of its appeal. The motion to reopen and motion to reconsider will be denied for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of C-D- Ltd.*, ID# 3101333 (AAO Mar. 21, 2019)