U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF V-N-A- LLC

DATE: MAR. 24, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a motorcycle manufacturer and research and development company, seeks to employ the Beneficiary as an industrial engineer under the immigrant classification of skilled worker. *See* Immigration and Nationality Act section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based 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 2 years of training or experience.

The Director, Texas Service Center, initially approved the petition. The Director subsequently revoked the petition's approval on multiple grounds, and the Petitioner appealed. We issued a decision dismissing the appeal as abandoned, dismissing the appeal based on the record, and invalidating the underlying labor certification with a finding of willful misrepresentation of a material fact by the Petitioner and the Beneficiary.

The matter is now before us on a motion to reopen and a motion to reconsider. The Petitioner contends that we dismissed the appeal in error. Upon review, we will deny the motion to reopen and motion to reconsider.

I. LAW

A motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law or policy*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2) and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

In this case, the appeal was dismissed as abandoned, in part, because the Petitioner did not respond to our second notice of intent to dismiss (NOID).[1] A motion to reopen an application or petition denied due to abandonment must be filed with evidence that the decision was in error because: (1)

[1] We issued a NOID, and then a request for evidence, to both of which the Petitioner responded. We subsequently sent a second NOID which alerted the Petitioner that the educational documents submitted appeared to be fraudulent.

the requested evidence was not material to the issue of eligibility, (2) the required initial evidence was previously submitted, or (3) the request for additional information was sent to the wrong address. *See* 8 C.F.R. § 103.5(a)(2).

II. ANALYSIS

As the basis of its motion to reopen, the Petitioner asserts that our dismissal of the appeal in part due to abandonment was erroneous because the issues raised in our second NOID were not material to the issue of eligibility and all previously requested evidence had been submitted.

Our second NOID alerted the Petitioner that the educational documents submitted appeared to be fraudulent. Specifically, we informed the Petitioner that in order to verify the authenticity of the Beneficiary's educational documents, we requested the assistance of the U.S. Citizenship and Immigration Services (USCIS) field office in The results of that inquiry cast doubt on the veracity of the Beneficiary's claim to have earned a in Mexico. USCIS verified with the that the Beneficiary studied at the university for only five semesters, did not complete the eight semesters required for a degree, and that the document purported to be the Beneficiary's is fraudulent. The Legal Department of the in also confirmed that there is no record for the Beneficiary on its database, and that the professional identity card number written on one of the degree documents belongs to another individual. As such, we indicated that it appeared that the Beneficiary does not have the educational credential claimed in the labor certification – a foreign equivalent degree to a bachelor's degree in industrial design – and that the documents submitted in support of this claim – the alleged and accompanying transcripts – are fraudulent.

We further stated that in view of the derogatory information received from the USCIS field office, we intended to invalidate the labor certification based on a finding of fraud or willful misrepresentation of a material fact, *see* 20 C.F.R. § 656.30(d), and dismiss the appeal because the petition is not supported by a valid labor certification, as required by 8 C.F.R. § 204.5(l)(3)(i). We advised the Petitioner that it could submit additional evidence to rebut the derogatory information, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), and that any response to the NOID must be received by us within 33 days. The Petitioner did not respond to the NOID.

Since the Petitioner did not submit any evidence to rebut the derogatory information contained in the record, we invalidated the labor certification based on a finding of willful misrepresentation of a material fact by the Petitioner and the Beneficiary, in accordance with the regulation at 20 C.F.R. § 656.30(d). As prescribed in 8 C.F.R. § 103.2(b)(13)(i), we also dismissed the appeal as abandoned and dismissed the appeal based on the record because the petition was not supported by a valid labor certification as required by 8 C.F.R. § 204.5(l)(3)(i).

According to the Petitioner, its submission of an eight-semester transcript of the Beneficiary's alleged coursework at the in response to our initial NOID,

which supplemented the five-semester transcript previously submitted, complied with the requirements of 8 C.F.R. § 103.5(a)(2)(ii) because it established that the Beneficiary completed the requisite coursework to earn a [redacted] thereby satisfying the educational requirement of the labor certification. In our second NOID, however, we advised the Petitioner that the documentation of the Beneficiary's education appeared to be fraudulent, and gave the Petitioner the opportunity to submit rebuttal evidence to establish the validity of the documentation. Since the alleged baccalaureate-level credential from the [redacted] was needed to meet the educational requirement of the labor certification, the requested evidence was material to the issue of the Beneficiary's eligibility for an employment-based immigrant visa. Accordingly, the lack of a response by the Petitioner warranted our dismissal of the appeal in part for abandonment.

On motion the Petitioner cites a letter from the Director of the [redacted] which states that the Beneficiary studied at the university during the years 1997-2000 and appears to refer to him as a graduate. This letter was previously submitted by the Petitioner, however, and is contradicted by the information we subsequently received from the USCIS field office in [redacted] which indicated that the Beneficiary completed only five semesters of study in the years 1996-1998 and did not earn a degree. The Petitioner has not addressed this conflict, either in response to our second NOID or in its current motion, and has submitted no further documentation from university authorities to corroborate the claim that the Beneficiary completed eight semesters of coursework and graduated with a degree.

The Petitioner further claims that the professional identity card number written on one of the educational documents, which was referenced in our second NOID, was on a license issued to the Beneficiary on May 21, 2001. According to the Petitioner, the Beneficiary ceased to work in Mexico in October 2005, after which he stopped paying fees and his license was terminated. Counsel speculates that the Beneficiary's card number was reassigned to another individual. No documentary evidence has been submitted in support of this theory, and as far as the record shows neither counsel nor the Petitioner has contacted authorities in Mexico to obtain more information about the license number. Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

In accord with the foregoing discussion, the record does not support the Petitioner's contention that the evidence requested in our second NOID was not material to the issue of the Beneficiary's eligibility for the immigration benefit sought in this proceeding. Therefore, the dismissal of the appeal in part for abandonment was not erroneous, and does not provide a legal basis to reopen the proceeding.

Nor has the Petitioner provided any new facts or pertinent documentation to review in a reopened proceeding. Most of the documents submitted with the current motion are copies of materials already in the record. The only new documents are the website extracts of general information from the [redacted] and the [redacted] neither of

which have any information about the Beneficiary and his educational credentials, or lack thereof, in Mexico. Thus, there is no basis in the record to reopen this proceeding.

Furthermore, the Petitioner has not presented any persuasive argument or pertinent precedent decisions showing that our decision was based on an incorrect application of law or USCIS policy, as required in a motion to reconsider. Contrary to the Petitioner's assertion that the evidence requested in our second NOID, was not material, it was directly material to the issue of whether the documentation of the Beneficiary's alleged credentials from the [redacted] is fraudulent, as indicated in the investigation of our USCIS field office, or genuine, as maintained by the Petitioner and the Beneficiary. The resolution of this issue determines whether the Beneficiary meets the minimum educational requirement of the labor certification and is eligible for immigrant classification as a skilled worker, and whether fraud or willful misrepresentation of a material fact has been committed. On motion, the Petitioner asserts that we misapplied the regulation at 8 C.F.R. § 103.2(b)(13)(i) in our decision to invalidate the labor certification and dismiss the appeal in part due to abandonment. However, as the Petitioner did not respond to our second NOID inviting the submission of rebuttal evidence, the Petitioner's claim has no merit.

III. CONCLUSION

Based on the foregoing discussion, we find that the Petitioner's motion does not meet the requirements of a motion to reopen or a motion to reconsider.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of V-N-A- LLC*, ID# 150907 (AAO Mar. 24, 2017)