U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30452555

Date: MAR. 25, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a provider of health care products and services, seeks to employ the Beneficiary as an area immunoassay and clinical chemistry specialist. It requests his classification as a skilled worker under the third preference immigrant classification. Immigration and Nationality Act (the 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 noncitizen for lawful permanent resident status to work in a position that requires at least two years of training or experience.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary met the minimum education requirements stated on the labor certification. We dismissed the Petitioner's appeal of the Director's decision. The Petitioner subsequently filed a combined motion to reopen and reconsider, followed by three motions to reconsider, and we dismissed all four motions. The matter is now before us on a fifth motion to reconsider. 8 C.F.R. § 103.5(a).

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion to reconsider.

A motion to reconsider must establish that our prior 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). We do not consider new facts or evidence in a motion to reconsider.

In dismissing the Petitioner's appeal and four subsequent motions, we have considered the Petitioner's legal arguments, as well as additional evidence submitted in support of the Petitioner's motion to reopen. Our prior decisions are part of the record of proceeding and are incorporated here by reference.

The Director determined that the record did not establish that the Beneficiary met the minimum education requirements for the offered position as stated on the labor certification.[1] Specifically, the Director determined that the labor certification states that a U.S. bachelor's degree or a foreign equivalent degree is the primary, minimum education required for the offered position, and that no alternate combination of education and experience is acceptable. We have agreed with the Director, and the Petitioner does not disagree, that the record reflects that the Beneficiary, whose foreign degree is equivalent to two and one-half years of undergraduate study, does not possess such a degree and therefore does not meet the stated primary, minimum education requirement.

In our prior decisions dismissing the Petitioner's third and fourth motions to reconsider, we concluded it did not establish, as required by 8 C.F.R. § 103.5(a)(3), that we incorrectly applied the law or USCIS policy in our decision dismissing its second and subsequent motions. Rather, we determined that the Petitioner's motion to reconsider reiterated legal arguments and cited to non-binding authorities that we had previously reviewed and addressed in our prior decisions.

With this fifth motion, the Petitioner again contests the correctness of our prior adverse decisions and asserts that we have continually erred in upholding the denial of this petition. In its brief, the Petitioner reiterates its assertion that we did not consider all language of the labor certification, including language it asserts identifies an alternate minimum requirement. The Petitioner also asserts that our prior decisions did not address all evidence in the record, specifically an evaluation of the Beneficiary's education and experience prepared by [redacted]

On appeal and in prior motions, the Petitioner has asserted that Part H.14 of the labor certification ("Specific skills or other requirements") identifies the alternate minimum education requirement for the offered position, which states, in part: "[the Petitioner] will accept educational equivalency evaluation prepared by qualified evaluation service or in accordance with 8 CFR § 214.2(h)(4)(iii)(D)."[2] The Director noted that the Petitioner's reliance on 8 C.F.R. § 214.2(h)(4)(iii)(D) is misplaced as it is applicable to the H-1B nonimmigrant classification. In our decision dismissing the appeal, we addressed the Petitioner's argument and stated, "The minimum education and experience required by the labor certification, however, is unchanged by the language in Part H.14 ... The plain language of the labor certification does not support the Petitioner's claimed intent to accept less than a U.S. bachelor's or foreign equivalent degree to meet the minimum educational requirement for the proffered position." We again addressed this argument in dismissing the Petitioner's motion to reopen, noting that "DOL was not informed that the Beneficiary sought to rely on an alternate combination of education and experience." On its current motion, other than expressing its disagreement with our decisions, the Petitioner has not articulated or demonstrated how we misapplied the law or USCIS policy in our prior decisions. Rather, the Petitioner disagrees with

[1] In employment-based immigration an employer first obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). Next, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Finally, if USCIS approves the petition, the beneficiary may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

[2] The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D), which is applicable to the H-1B nonimmigrant classification, provides several options for equivalency to completion of a college degree, including, among other things, a determination that the equivalent of a degree has been acquired through a combination of education, specialized training, and/or work experience.

our prior decisions and urges us to "include the acceptable alternative requirements in [the] adjudication of the case."

On motion the Petitioner also asserts that our prior decisions did not address the evaluation of the Beneficiary's education and employment experience prepared by [redacted] College. However, [redacted] evaluation was specifically discussed in our dismissal of the appeal. We noted that the evaluation concludes that the Beneficiary possesses the equivalent of "two and one-half years of undergraduate coursework, and that the combination of this education and his over 15 years of experience in computer science and engineering is equivalent to a bachelor's degree in computer science and engineering from a regionally accredited undergraduate-level program or institution in the United States." However, the Petitioner does not explain how this evaluation demonstrates that the Beneficiary meets the primary, minimum education requirement stated on the labor certification - a U.S. bachelor's degree or a foreign equivalent degree, with no combination of education and experience accepted.

The Petitioner's assertions in the current motion again reargue facts and issues that have already been addressed in our previous decisions. *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"). The Petitioner has not shown proper cause for reconsideration of our prior decision. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reconsider is dismissed.