U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10048392

DATE: MAR. 27, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for a Skilled Worker

The Petitioner, a travel agency, seeks to employ the Beneficiary as a manager of travel and tours. It requests skilled worker classification for the Beneficiary under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based "EB-3" 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 two years of training or experience.

The petition was initially approved by the Director of the Texas Service Center. The approval was subsequently revoked by the Director of the Nebraska Service Center, who found that the Petitioner committed fraud or misrepresented material facts with respect to its work address and the familial relationship between the Beneficiary and the Petitioner's owner/corporate officers. Based on the finding of fraud or willful misrepresentation of a material fact, the Director invalidated the labor certification and revoked the approval of the petition because it was not supported by a valid labor certification as required by 8 C.F.R. § 204.5(l)(3)(i). The Director also found that the Petitioner did not establish its continuing ability to pay the proffered wage from the priority date of November 2, 2005, onward.

The Petitioner filed an appeal, which we dismissed. The Petitioner has since then filed ten motions to reopen and reconsider, nine of which we have dismissed and the latest of which is currently before us.

Upon review, we will dismiss the combined motions.

A. Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2).

The Petitioner reiterates previous assertions that no fraud or willful misrepresentation of a material fact was committed regarding the familial relationship between itself and the Beneficiary and references previously submitted documents. The Petitioner states no new facts, however, and submits no new evidence. The Petitioner also reiterates previous assertions that it has established its ability to pay the proffered wage from the priority date onward, and references its tax filings for the years 2005-2011. In prior decisions we found that the Petitioner had not established its ability to pay the proffered

wage in the years 2006-2008. No new facts have been stated for those years, however, and no new evidence has been submitted.

Accordingly, the Petitioner has not shown proper cause for reopening the proceedings with regard to the finding of fraud or willful misrepresentation of a material fact in the labor certification and the Petitioner's continuing ability to pay the proffered wage from the priority date onward.

B. Motion to Reconsider

A motion to reconsider must establish that our previous decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence of record at the time of the decision. 8 C.F.R. § 103.5(a)(3).

The Petitioner reiterates previous assertions that it did not engage in fraud or willful misrepresentation of any material fact in the labor certification. These assertions were thoroughly discussed in our prior decisions, however, and the Petitioner does not identify any incorrect application of law or policy by us in those decisions. Nor does the Petitioner identify any incorrect application of law or policy in our prior decisions with regard to the Petitioner's continuing ability to pay the proffered wage from the priority date onward.[1] The Petitioner once again urges us to consider the totality of its circumstances, in accordance with *Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967), but we have already done so in prior decisions.

Accordingly, the Petitioner has not shown proper cause for reconsideration of our previous decisions with regard to the finding of fraud or willful misrepresentation of a material fact in the labor certification and the Petitioner's continuing ability to pay the proffered wage from the priority date onward.

III. CONCLUSION

The Petitioner has not shown proper cause for reopening or reconsideration of our prior decision, nor established eligibility for the benefit sought.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

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[1] While the Petitioner asserts that for the years 2006 and 2007 we should consider its ratio of total current assets to total current liabilities (dividing current assets by current liabilities), in accordance with advice provided at a teleconference of the Eastern Service Center (ESC) and the Association of Immigration lawyers of America (AILA) in 1994, the Petitioner does not explain how that calculation would establish its ability to pay the proffered wage in those years. Moreover, advice from an ESC/AILA teleconference is not dispositive for us. USCIS is bound by the Act, agency regulations, precedent decisions of the agency, and published decisions of the federal court of appeals from whatever circuit that the action arose. *See N.L.R.B. v Ashkenazy Property Management Corp.*, 817 F.2d 74, 75 (9th Cir. 1987) (administrative agencies are not free to refuse to follow precedent in cases originating within the circuit); *R.L. Inv. Ltd. Partners v. INS*, 86 F.Supp. 2d 1014, 1022 (D. Haw. 2000), *aff'd*, 273 F.3d 874 (9th Cir. 2001) (unpublished agency decisions and agency legal memoranda are not binding under the Administrative Procedure Act, even when they are published in private publications or widely circulated).