U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-G-&T- LLC

DATE: MAY 1, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a construction company, seeks to employ the Beneficiary as a tile installer. It requests his classification under the third-preference, immigrant category as a skilled worker. 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" category allows a U.S. business to sponsor a foreign national for lawful permanent resident status to work in a job requiring at least two years of training or experience.

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate the Beneficiary's possession of the minimum employment experience and skills required for the offered position. We summarily dismissed the Petitioner's appeal, finding that the filing did not allege any erroneous conclusions of fact or statements of law.

The matter is before us again on the Petitioner's motions to reopen and reconsider. The Petitioner asserts that, in support of the appeal, it submitted a statement arguing that the Director erred by disregarding evidence of the Beneficiary's qualifications for the offered position.

Upon review, we will deny the motions.

I. MOTION REQUIREMENTS

A motion to reopen must assert new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must assert a prior decision's misapplication of law or policy based on the record at that time. 8 C.F.R. § 103.5(a)(3). We may grant a motion that meets these requirements and demonstrates eligibility.

II. DISCUSSION

The Petitioner filed its appeal in June 2018. The filing did not specify the basis of the appeal. But the Form I-290B, Notice of Appeal, indicated that the Petitioner would submit a written brief, additional evidence, or both within 30 days of the appeal's filing. As of December 7, 2018, we had not received an additional submission from the Petitioner. We therefore summarily dismissed the appeal. *See*

8 C.F.R. § 103.3(a)(1)(v) (requiring summary dismissal "when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal").

On motion, the Petitioner asserts that we erred in summarily dismissing its appeal by disregarding a July 2018 statement it submitted in support of the filing. It contends that the statement argued that the Director disregarded evidence of the Beneficiary's qualifications for the offered position. We, however, have no record of receiving a July 2018 statement supporting the appeal. The Form I-290B instructed the Petitioner to submit additional materials "to the AAO," rather than to the USCIS office that received the appeal or issued the decision. *See* 8 C.F.R. § 103.2(a)(1) (incorporating a form's instructions into the regulations). The Petitioner does not provide evidence of its submission of a July 2018 statement, nor does it indicate where it purportedly sent the statement. *See* 8 C.F.R. § 103.2(a)(7)(i) (stating that USCIS only receives a benefit request "at the location designated for filing such benefit request"). As the Petitioner does not submit documentary evidence on motion to support its claims, the motion to reopen must be denied.[1] Further, the Petitioner has not established that, as of our appellate decision, we disregarded a statement from the Petitioner and therefore erroneously dismissed the appeal. We will therefore deny the motion to reconsider.

III. CONCLUSION

The motion to reopen does not contain documentary evidence supporting new facts to overcome our prior decision. The motion to reconsider does not establish our misapplication of law or policy based on the record at that time. We will affirm our summary dismissal of the appeal for the forgoing reasons, with each considered an independent and alternate ground of affirmance. A petitioner bears the burden of establishing eligibility for a requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Petitioner did not meet that burden.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of J-G-&T- LLC*, ID# 3979842 (AAO May 1, 2019)

[1] In support of its motion, the Petitioner submits copies of letters from its president and the Beneficiary regarding the Beneficiary's qualifications for the offered position. The Petitioner, however, previously submitted the Beneficiary's letter in response to the Director's request for additional evidence. It also previously submitted its president's letter in response to the Director's notice of intent to deny. Thus, contrary to 8 C.F.R. § 103.5(a)(2), the evidence does not support "new facts." Moreover, these documents do not overcome our prior decision to summarily dismiss the appeal and therefore do not show cause to reopen the proceeding.