U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30867470

Date: MAY 10, 2024

Motions on Administrative Appeals Office Decision

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

The Petitioner, a provider of car audio services, seeks to permanently employ the Beneficiary as a car audio installer. The company requests his classification under the employment-based, third-preference (EB-3) immigrant visa category as a "skilled worker." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). U.S. businesses may sponsor noncitizens in this subcategory to work in jobs requiring at least two years of training or experience. *Id.*

The Acting Director of the Texas Service Center denied the petition. The Director concluded that, contrary to the offered job's requirements, the Petitioner did not demonstrate the Beneficiary's experience with designated materials. On appeal, we summarily dismissed the company's filing, finding that it did not allege an erroneous conclusion of law or statement of fact. *See* 8 C.F.R. § 103.3(a)(1)(v).

The matter returns to us on the Petitioner's combined motions to reopen and reconsider. The company bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will grant the motion to reconsider. The company has demonstrated the Beneficiary's work with the requisite materials. We will therefore also sustain the appeal.

I. LAW

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 demonstrate that our most recent decision misapplies law or U.S. Citizenship and Immigration Services (USCIS) policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). When adjudicating motions, we consider only our most recent decision. 8 C.F.R. § 103.5(a)(1). We may grant motions that meet these requirements and demonstrate eligibility for the requested benefit.

II. ANALYSIS

A. The Summary Dismissal

We must summarily dismiss an appeal that does not "identify specifically any erroneous conclusion of law or statement of fact." 8 C.F.R. § 103.3(a)(1)(v).

Consistent with the regulation, the Petitioner asserted erroneous statements of specific facts. We will therefore grant the company's motion to reconsider and review the Director's denial of the petition.[1]

B. The Beneficiary's Experience with the Required Materials

A petitioner must demonstrate a beneficiary's possession of all U.S. Department of Labor (DOL) - certified job requirements of an offered position by a petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). When assessing a beneficiary's qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine the job's minimum requirements. We may neither ignore certification terms nor impose unstated requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

This petition's priority date is December 1, 2021, the date DOL accepted the accompanying labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

The labor certification states that the offered job of car audio installer requires neither education nor training but at least three years of experience "in the job offered." The labor certification indicates that the Petitioner will not accept experience in an alternate occupation. Also, in response to Question H.14, "Specific skills or other requirements," the certification states: "Experience working with fiberglass, acrylic, abs, [polycarbonate], and carbon fiber."

On the labor certification, the Beneficiary attested that, by the petition's priority date, he gained more than four years of full-time, qualifying experience in Colombia. He stated that a car audio business employed him as a car audio installer technician from June 2017 to November 2021. The Beneficiary did not indicate any other qualifying experience.

Consistent with 8 C.F.R. § 204.5(l)(3)(ii)(A), the Petitioner provided a letter from the Beneficiary's former employer in Colombia. The 2021 letter from the business's general manager confirms the Beneficiary's job title and dates of employment. The letter also lists his former job duties.

The Director, however, issued a request for additional evidence (RFE). The RFE notes that, contrary to the required materials listed in response to Question H.14 of the labor certification, the former employer's letter did not indicate the Beneficiary's work with fiberglass, acrylic, abs, polycarbonate,

[1] As we will grant the motion to reconsider, we will dispense with adjudicating the motion to reopen and dismiss it as moot. *See Matter of Reyes*, 26 I&N Dec. 528, 528 n.3 (BIA 2015) (allowing an administrative tribunal to dismiss appeals and motions as moot if they lack practical significance).

and carbon fiber. The Petitioner's RFE response included a 2023 letter from the former employer. The more recent letter adds a sentence to the prior letter, indicating the Beneficiary's work with the materials listed in Question H.14. The Director denied the petition, however, stating that the 2023 letter "will not be considered because it post-date[s] this instant Form I-140 petition's date of filing." Citing *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971), the decision states that a petitioner must demonstrate eligibility at the time of a petition's filing and that the immigration service cannot approve a petition "after the petitioner becomes eligible under a new set of facts."

The Director erred in rejecting the 2023 letter from the Beneficiary's former employer. The Director correctly stated that a petitioner must establish eligibility "at the time of filing the benefit request." 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. at 49. But that rule bars evidence of post-filing events. The rule does not prevent a petitioner, after a petition's filing, from submitting evidence of education, training, or experience gained before the petition's filing. Thus, if the 2023 letter had indicated the Beneficiary's work with the required materials after the petition's filing date, the Director would have correctly barred the evidence. But the 2023 letter indicates that the Beneficiary gained experience with the materials before the petition's December 1, 2021 filing date.

The 2023 letter states that the Beneficiary "has extensive experience working with fiberglass, acrylic, abs, [polycarbonate], and carbon fiber, materials that are pertinent to the assembly and installation of the above [mentioned equipment]." Thus, the letter indicates that, while employed before the petition's December 1, 2021 priority date, the Beneficiary worked with the requisite materials.

The 2023 letter complies with regulations, and the record lacks evidence casting doubt on its authenticity or credibility. The Petitioner therefore has demonstrated the Beneficiary's experience with the materials specified in Question H.14 of the labor certification.

ORDER: The motion to reconsider is granted, and the appeal is sustained.