U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-F-, PLLC

DATE: NOV. 8, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a law office, seeks to employ the Beneficiary as an immigration law clerk. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. *See* Immigration and Nationality Act section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition on the ground that the Petitioner did not establish its continuing ability to pay the proffered wage from the priority date onward. The Petitioner filed an appeal, which we dismissed, affirming the Director's conclusion that the Petitioner did not establish its continuing ability to pay the proffered wage. The Petitioner subsequently filed two motions to reconsider, each of which we denied after confirming our previous findings that the Petitioner did not establish its continuing ability to pay the proffered wage. The matter is now before us for a fourth time – in this case on a motion to reopen and a motion to reconsider.

Upon *de novo* review, we will dismiss the motions.

I. LAW

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

A motion to reconsider must establish that our 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). A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services or Department of Homeland Security policy. *Id.*

We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The issue is whether the Petitioner has the ability to pay the proffered wage. A petitioner must establish that it has the ability to pay the beneficiary the proffered wage, as stated on the labor certification, from the priority date until the beneficiary obtains lawful permanent residence. *See* 8 C.F.R. § 204.5(g)(2). Evidence of the petitioner's ability to pay "shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements." *Id.*

The Petitioner's Form I-140 petition was accompanied by a labor certification with a priority date of September 26, 2013. The proffered wage, as stated in the labor certification, is $56,451 per year.

A. Motion to Reopen

In our previous decisions we found that the Beneficiary, whom the Petitioner claims to have employed since June 2012, was paid by a different legal entity wholly-owned by the Petitioner's owner and managing partner until well after the priority date. We concluded that payments from this other entity – – could not be considered in assessing the Petitioner's ability to pay the proffered wage. The Petitioner states that it now pays the Beneficiary out of its own bank account through a payroll service. In its current motion the Petitioner submits copies of the earnings statements issued to the Beneficiary from May 2016 to June 2017. While the Petitioner has stated a new fact supported by documentary evidence, it can only be considered as evidence of the Petitioner's ability to pay the proffered wage from May 2016 onward. It does not establish the Petitioner's ability to pay the proffered wage between the priority date of September 26, 2013, and the date of the initial earnings statement from the Petitioner in May 2016.

The Petitioner asserts that we did not give proper weight in our *Sonegawa* analysis to the evidence it submitted of its reputation in the industry. In our last decision we pointed out that this evidence, submitted with its second motion to reconsider, did not satisfy the requirements of a motion to reconsider and did not outweigh the fact that the record did not include the Petitioner's 2014 income tax return (or a 2014 annual report or audited financial statement, the other two types of required evidence in 8 C.F.R. § 204.5(g)(2)), which we stated was required to assess the totality of the Petitioner's circumstances. The documentation submitted by the Petitioner includes copies of certificates from various entities including and the recognizing the Petitioner and its managing partner for contributions in the legal field. While these certificates satisfy the evidentiary requirements of a motion to reopen, they have little probative value of the Petitioner's continuing ability to pay the proffered wage from the priority date onward, particularly in view of the fact that the Petitioner has still not furnished a copy of its 2014 federal income tax return, or an annual statement for 2014, or an audited financial statement for 2014, in accord with the requirements of 8 C.F.R. § 204.5(g)(2),

For the reasons stated above, as well as in our previous decisions, the evidence submitted by the Petitioner does not establish its continuing ability to pay the proffered wage of $56,451 per year

from the priority date of September 26, 2013, onward. The most glaring evidentiary omission is the absence of any one of the required forms of evidence in 8 C.F.R. § 204.5(g)(2). The Petitioner has not submitted its 2014 federal income tax return, or an annual report or audited financial statement for 2014, despite numerous opportunities to do so during these proceedings. Thus, the motion to reopen lacks crucial evidentiary support. As the Petitioner's submission on motion to reopen does not overcome our previous findings, the motion must be denied.

B. Motion to Reconsider

The Petitioner asserts that we incorrectly applied *Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967), in considering the totality of the Petitioner's circumstances for the purpose of assessing its ability to pay the proffered wage. For example, the Petitioner claims that we misstated the facts of *Sonegawa*. That argument was made in the Petitioner's first motion to reconsider, however, and discussed in our decision on that motion. We conceded one factual error in our initial review of *Sonegawa* (concerning that company's gross versus net income), but explained that it was not central to our *Sonegawa* analysis of the totality of the circumstances concerning the Petitioner's business. The Petitioner also asserts that we should not have considered its net income from years before the priority date. As explained in our decision on the Petitioner's second motion to reconsider, however, we considered such evidence in the context of assessing the Petitioner's overall financial situation and record of growth, which was made more difficult by the absence of the Petitioner's 2014 income tax return, or an annual report or audited financial statement for 2014, at least one of which is required evidence under 8 C.F.R. § 204.5(g)(2).

The Petitioner does not state any reason for reconsideration that has not already been made in its previous motions and discussed by us in our previous decisions. Although, the Petitioner disagrees with the *Sonegawa* analysis discussed above, it has not submitted any pertinent precedent decisions, statutes, regulations, or agency policy in support of its claim that our previous decisions were based on an incorrect application of law or Service policy. As the Petitioner's submission on motion to reconsider does not overcome our previous findings, the motion must be denied.

III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration or established eligibility for the immigrant benefit sought.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of F-F-, PLLC* ID# 737692 (AAO Nov. 8, 2017)