U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34691499

Date: NOV. 12, 2024

Motions on Administrative Appeals Office Decision

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

For the seventeenth time, the Petitioner files combined motions to reopen and reconsider this matter. The motion to reopen does not meet regulatory requirements, and the motion to reconsider does not demonstrate our misapplication of law or policy. We will therefore dismiss the motions.

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 prior decision misapplied law or policy based on the record at the time of the decision's issuance. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to our latest decision. 8 C.F.R. § 103.5(a)(1)(i), (ii) (referencing "the prior decision" and "the latest decision in the proceeding"). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

II. ANALYSIS

Our latest decision dismissed the Petitioner's prior motion to reopen, finding that, contrary to 8 C.F.R. § 103.5(a)(2), it did not state "new facts." *See In Re: 31388927* (AAO June 25, 2024). We dismissed the Petitioner's prior motion to reconsider because we previously rejected the arguments it contained. *Id.*; *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 . . . decision.")

A. Motion to Reopen

The Petitioner's new motion to reopen contains copies of the company's federal and state income tax returns from 2005 through 2011 and an article about "the Great Recession" of 2008. The record, however, already contains these materials. Thus, the motion does not state "new facts." *See* 8 C.F.R. § 103.5(a)(2). "A motion that does not meet applicable requirements shall be dismissed." 8 C.F.R. § 103.5(a)(4).

B. Motion to Reconsider

The Petitioner contends that its prior motion to reopen met regulatory requirements. Specifically, the business states that the prior motion included "secondary evidence" warranting a review of its ability to pay the proffered wage under *Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).

The Petitioner's new motion to reconsider, however, does not explain how its prior motion to reopen stated "new facts." *See* 8 C.F.R. § 103.5(a)(2). The new motion to reconsider therefore neither addresses the dismissal ground of the prior motion to reopen nor demonstrates eligibility for the requested benefit.

Also, the Petitioner contends that its prior motion to reconsider "provided arguments to demonstrate misapplication of law in relation to the facts of this case, particularly related to the definition of 'willful' under [section 212(a)(6)(C)(i) of the Act]."

But we did not dismiss the Petitioner's prior motion to reconsider based on the willful misrepresentation finding. Rather, we dismissed the prior motion to reconsider because it contained previously rejected arguments. *See Matter of O-S-G-*, 24 I&N Dec. at 58. Thus, the business's new motion to reconsider neither addresses the dismissal ground of the prior motion to reconsider nor demonstrates our misapplication of law or policy.[1]

The remaining arguments in the Petitioner's new motion to reconsider concern the business's purported ability to pay the offered job's proffered wage and our willful misrepresentation finding. Because our latest decision did not address those issues, they exceed this decision's scope of review. *See* 8 C.F.R. § 103.5(a)(1)(i), (ii) (limiting our review to "the prior decision" and "the latest decision in the proceeding").

III. CONCLUSION

The Petitioner's motion to reopen does not meet regulatory requirements. The company's motion to reconsider does not demonstrate our prior decision's misapplication of law or policy.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[1] Online government information continues to indicate state suspension of the Petitioner's corporate status. *See* Cal. Sec'y of State, "Business Search," https://bizfileonline.sos.ca.gov/search/business. The suspension casts doubt on the company's continued operations and its intent to employ the Beneficiary in the offered job. *See* section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F) (requiring a petitioner to be "desiring and intending to employ [a noncitizen] within the United States"). In any future filings in this matter, the Petitioner must submit evidence of its intent to employ the Beneficiary in the offered job.