U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-C-&A- LLC

DATE: NOV. 23, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE

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

The Petitioner, a construction company, seeks to employ the Beneficiary as an administrative support worker. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant category. *See* 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 Director of the Texas Service Center initially approved the petition, but subsequently revoked the approval after concluding that the Petitioner, due to unresolved discrepancies in the record about the Beneficiary's employment history, had not established that the Beneficiary had at least two years of qualifying experience, as required by the labor certification. The Petitioner filed a motion to reopen and reconsider, which the Director denied on the ground that it did not overcome the grounds for revocation. The Petitioner then filed an appeal, which we dismissed on the grounds that the Petitioner had not resolved the conflicting evidence in the record about the Beneficiary's work history and did not establish that the Beneficiary had at least two years of qualifying experience as required by the labor certification and for classification as a skilled worker.

The matter is now before us on a motion to reconsider. Upon review, we will deny the motion.

I. LAW

In a motion to reconsider the Petitioner must establish that the decision being challenged was based on an *incorrect application of law or policy*. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

A motion to reconsider our dismissal of the appeal must establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. *Id.* We do not consider new facts or evidence in a motion to reconsider. A motion to reconsider must also be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland

Security (DHS) policy. *Id.* A motion that does not meet applicable requirements shall be denied. *See* 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

As discussed in our previous decision dismissing the appeal, the Director's revocation decision was based on findings that the Beneficiary's experience as described on the labor certification and in supporting letters was inconsistent with other records showing that the Beneficiary was in the United States during significant periods of time in which she claimed in this proceeding to be working in Hungary. The Director further found that the additional experience the Beneficiary claimed in response to the Director's notice of intent to revoke (NOIR) was also not persuasive because it was not previously listed on the labor certification and the supporting documentation was not sufficient to resolve prior contradictory evidence or establish that the Beneficiary was in fact employed full-time in the additional jobs. On appeal the Petitioner offered further explanations for the conflicting evidence previously provided, but we found these explanations unconvincing and upheld the Director's finding that the Petitioner did not resolve the contradictions in the record. We concluded that the evidence submitted by the Petitioner did not establish that the Beneficiary had at least two years of qualifying experience as required by the labor certification and for classification as a skilled worker.

In its motion to reconsider the Petitioner asserts that we should reconsider previously submitted documentation relating to claims of employment in two different jobs that were either not listed or listed incorrectly on the labor certification. The Petitioner also asserts that we should reconsider evidence that inconsistent information previously provided by the Petitioner and the Beneficiary resulted from ineffective and fraudulent representation, not an intent to deceive U.S. officials. In sum, the Petitioner contends that the objective evidence of the Beneficiary's qualifying employment supersedes the inconsistent information in the labor certification and that the Beneficiary had no incentive to fabricate any evidence.

The Petitioner's motion does not meet the requirements of a motion to reconsider because it does not show that our dismissal of the appeal was based on an incorrect application of law or of USCIS or DHS policy. The Petitioner requests that we reconsider the evidence of the Beneficiary's employment history, which was already thoroughly discussed in our previous decision. The Petitioner disagrees with our finding(s) that the Beneficiary's qualifying employment has not been established, but has not cited to any pertinent precedent or adopted decision, statutory or regulatory provision, or statement of policy to establish any incorrect application of law or policy in our decision. We also thoroughly discussed in our previous decision the Petitioner's claim that the Beneficiary received ineffective representation in earlier proceedings which resulted in the evidentiary discrepancies in the record. The Petitioner disagrees with our finding(s) that the alleged ineffective representation did not absolve the Beneficiary and the Petitioner of responsibility for conflicting evidence they provided, but has not cited to any pertinent precedent or adopted decision, statutory or regulatory provision, or statement of policy to demonstrate an incorrect application of law or policy in our decision.

For the reasons discussed above, the Petitioner has not met the requirements for a motion to reconsider under 8 C.F.R. § 103.5(a)(3).

III. CONCLUSION

The Petitioner has not shown proper cause for the reconsideration of our prior decision, nor established eligibility for the immigration benefit sought in this proceeding.

ORDER: The motion to reconsider is denied.

Cite as *Matter of C-C-&A- LLC*, ID# 1659842 (AAO Nov. 23, 2018)