U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-S-, INC.

DATE: OCT. 16, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: I-140, IMMIGRANT PETITION FOR ALIEN WORKER

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

The Director of the Nebraska Service Center denied the petition, finding that the Beneficiary did not have a U.S. bachelor's degree or a foreign equivalent degree and therefore did not meet the minimum educational requirement for the job under the terms of the labor certification and did not qualify for classification as a professional. The Petitioner filed an appeal, which we dismissed. Like the Director, we found that the Beneficiary did not have the requisite degree to meet the minimum educational requirement of the labor certification and to qualify for classification as a professional. We also found that the evidence of record did not establish that the Beneficiary had the experience required by the labor certification. On motion to reopen and reconsider, we withdrew our finding that the Beneficiary lacks the experience required by the labor certification, but affirmed our findings that the Beneficiary does not have the requisite educational degree to meet the terms of the labor certification and qualify for professional classification. The matter is now before us on another motion to reopen and motion to reconsider.

Upon review, we will deny 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, a statutory or regulatory provision, or a statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security (DHS) policy. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

A petition filed for professional classification must be accompanied by evidence that the beneficiary holds a U.S. bachelor's degree or a foreign equivalent degree. *See* 8 C.F.R. § 204.5(l)(3)(ii)(C). A beneficiary must also meet all of the education, training, experience, and other requirements of the labor certification as of the petition's priority date.[1] *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 150 (Acting Reg'l Comm'r 1977). In our decision dismissing the appeal, we found that the Beneficiary's three-year bachelor of commerce degree from the in India is not equivalent to a bachelor's degree from a U.S. college or university, which generally requires four years of study. *See Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977). We concluded that the Beneficiary does not meet the minimum educational requirement of the labor certification, which is a bachelor's degree in commerce or accounting or a foreign educational equivalent, and does not qualify for classification as a professional because she does not have a U.S. bachelor's degree or a foreign equivalent degree. We affirmed these findings in our decision on the Petitioner's initial motion(s) to reopen and reconsider.

A. Motion to Reopen

In its current motion the Petitioner asserts that according to World Education Services (WES), an evaluator of foreign educational credentials, a three-year bachelor's degree in India which is earned in Division I or II and awarded by an institution accredited by India's National Assessment and Accreditation Council (NAAC) with a grade of A is equivalent to a four-year bachelor's degree in the United States. The Petitioner submits a "Certificate of Accreditation" from the NAAC, dated April 21, 2012, which accredited the at A grade for a five-year period up to April 20, 2017. However, the Petitioner does not submit the alleged evaluation from WES. Accordingly, there is no way to assess the probative value of its alleged claim regarding the U.S. equivalence of certain three-year bachelor's degrees from India, or the applicability of the WES evaluation to the Petitioner's particular degree.

The Petitioner cites another evaluation from of Career Consulting International (CCI), previously submitted, which concluded that the Beneficiary's three-year bachelor of commerce from the is equivalent to a bachelor of commerce degree from an accredited U.S. college or university. This evaluation was thoroughly discussed in our initial decision dismissing the Petitioner's appeal. We found then that the CCI evaluation had little probative value, and the Petitioner has submitted no new fact(s) in the current motion to alter our previous finding. For the reasons discussed above, we will deny the motion to reopen.

[1] The "priority date" of a petition is the date the underlying labor certification is filed with the Department of Labor. *See* 8 C.F.R. § 204.5(d). In this case the priority date is June 17, 2011.

B. Motion to Reconsider

The Petitioner does not allege that our prior decision was based on any incorrect application of law or policy, as required by 8 C.F.R. § 103.5(a)(3). Nor does the Petitioner cite any precedent or adopted decision, any statutory or regulatory provision, or any statement of USCIS or DHS policy in support of its motion to reconsider. Therefore, we will deny the motion to reconsider.

III. CONCLUSION

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

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of M-S-, Inc.* ID# 1907689 (AAO Oct. 16, 2018)