U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-E-S-

DATE: OCT. 27, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a sole proprietorship that designs fire alarm and security systems, seeks to employ the Beneficiary as an electrical systems designer. It requests his classification 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" category allows a U.S. business to sponsor a foreign national with at least two years of training or experience for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not demonstrate its required ability to pay the proffered wage. On appeal, we affirmed the decision. We also found that the record did not establish the Beneficiary's possession of the minimum experience required for the offered position.

The matter is now before us on the Petitioner's combined motions to reopen and reconsider. The Petitioner asserts that prior counsel rendered ineffective assistance to it.

Upon review, we will deny the motions.

I. LAW

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our prior decision, based on the record at that time, misapplied law or policy. 8 C.F.R. § 103.5(a)(3). 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 or Department of Homeland Security policy. We may grant motions that satisfy these requirements and demonstrate eligibility for the requested immigration benefit.

II. ANALYSIS

A. The Motion to Reopen

Here, the Petitioner's motion to reopen asserts that prior counsel rendered ineffective assistance to it in these petition proceedings. The Petitioner states: "Not only were the forms completed improperly, but both the petitioner and the beneficiary were not adequately counseled." Contrary to 8 C.F.R. § 103.5(a)(2), however, the motion does not support its allegations with documentary evidence.

The motion also does not comply with requirements for asserting a claim of ineffective assistance of counsel. A claimant in immigration proceedings must: attest to the scope of its agreement with prior counsel and the actions counsel took; demonstrate that it informed counsel of the allegation of ineffectiveness and allowed the attorney an opportunity to respond; and show that it filed a disciplinary complaint against counsel, or explain why it did not. *Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). In addition, the motion does not demonstrate that prior counsel's performance prejudiced the Petitioner. *See, e.g., Martinez-Hernandez v. Holder*, 778 F.3d 1086, 1088 (9th Cir. 2015) (citations omitted) (stating that a claimant is prejudiced if counsel's inadequacies "may have affected the outcome of the proceedings").

For the foregoing reasons, we will deny the motion to reopen.

B. The Motion to Reconsider

Contrary to 8 C.F.R. § 103.5(a)(3), the Petitioner's motion to reconsider does not assert, let alone establish, that our prior decision misapplied law or policy. We will therefore deny the motion to reconsider.

C. The Petitioner's Intention to Employ the Beneficiary

Public records indicate that, while the Petitioner's appeal was pending, its sole proprietor formed a corporation that operates from the Petitioner's address. *See* Cal. Sec'y of State, "Business Search," https://businesssearch.sos.ca.gov/ (last visited Sept. 1, 2017). These records suggest that the corporation now conducts the Petitioner's former business and that the sole proprietorship no longer exists. The record therefore does not establish the Petitioner's intention to employ the Beneficiary in the offered position of electrical systems designer. *See Matter of Izdebska*, 12 I&N Dec. 54, 55 (Reg'l Comm'r 1966) (affirming a petition's denial where the petitioner did not intend to employ the beneficiary in the offered position as a full-time, live-in domestic worker).

In any future filings in this matter, the Petitioner must establish its intention to employ the Beneficiary in the offered position. Also, if the sole proprietor's corporation intends to employ the Beneficiary in the offered position, it may use the labor certification accompanying this petition only if it establishes itself as the Petitioner's successor in interest. *See Matter of Dial Auto Repair Shop,*

Inc., 19 I&N Dec. 481 (Comm'r 1986) (explaining the criteria for establishing a successor relationship between a petitioner and a labor certification employer).

III. CONCLUSION

The motion to reopen lacks documentary evidence and does not otherwise comply with requirements for asserting a claim of ineffective assistance of counsel. The motion to reconsider does not establish that our appellate decision misapplied law or policy.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of I-E-S-*, ID# 799996 (AAO Oct. 27, 2017)