U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-U-S-

DATE: OCT. 27, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a sole proprietor operating retail shipping stores, seeks to employ the Beneficiary as an administrative assistant. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. *See* Immigration and Nationality Act section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based 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 Nebraska Service Center denied the petition. The Director determined that the Petitioner had not established its continuing ability to pay the Beneficiary's proffered wage from the priority date of December 8, 2006, onward. We dismissed the subsequent appeal, concluding that the Petitioner had not established its ability to pay the proffered wage. The Petitioner subsequently filed several motions to reopen and reconsider. In our most recent decision, we again concluded that the Petitioner had not established its ability to pay the proffered wage for 2009 through 2013.

The matter is now before us on a motion to reopen and a motion to reconsider. On motion, the Petitioner provides previously submitted evidence and asserts that if we consider the Department of Health and Human Services (HHS) federal poverty guidelines as of the priority date, then the Petitioner has submitted sufficient evidence to establish its ability to pay the proffered wage. Upon review, we will deny both motions.

I. LAW

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." A motion to reconsider must establish that, based on the record at that time, our prior decision 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 (USCIS) 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. Motion to Reopen

On motion to reopen, the Petitioner asserts that it is providing "additional relevant, probative, and credible evidence" to establish that it is more likely than not that it has the ability to pay the proffered wage to the Beneficiary. Instead, the Petitioner submits previously provided evidence in the form of the Beneficiary's IRS Forms W-2, Wage and Tax Statement, for 2011, 2012, and 2013. We have considered and addressed the evidence of the Petitioner's payment of wages to the Beneficiary in our prior decisions. We will therefore deny the motion to reopen because the Petitioner's evidence was previously submitted and does not constitute new facts.

B. Motion to Reconsider

On motion to reconsider, the Petitioner asserts that we used an incorrect standard to assess its ability to pay and that according to "the Standard Operating Procedures," we should have used the federal poverty guidelines set by HHS in 2006, the year of the priority date, rather than the Petitioner's actual household expenses. The Petitioner provides a printout of the 2006 HHS federal poverty guidelines; however, these do not reflect that they are binding on USCIS in adjudication of Form I-140 petitions. The Petitioner does not provide a copy of the standard operating procedures to which it refers, and we are unaware of Form I-140 guidance in the USCIS Policy Manual or the relevant portion of the Adjudicator's Field Manual requiring USCIS adjudicators to apply the HHS federal poverty guidelines in determining a Petitioner's ability to pay the proffered wage.[1] Accordingly, the Petitioner has not established that our prior decision was based on an incorrect application of law or policy. We will therefore deny the motion to reconsider.

III. CONCLUSION

The Petitioner has not established its filing meets the requirements of a motion to reopen or a motion to reconsider.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of T-U-S-*, ID# 839342 (AAO Oct. 27, 2017)

[1] *See* Immigration Handbooks, Manuals, and Guidance at https://www.uscis.gov/laws/immigration-handbooks-manuals-and-guidance (last visited on October 12, 2017).