U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33607225

Date: OCT. 30, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a liquor store, seeks to employ the Beneficiary as a bookkeeper. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. *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 immigrant classification allows a U.S. employer to sponsor a noncitizen 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 in 2004 but ultimately revoked that approval in December 2022, concluding that the Petitioner did not demonstrate that the Beneficiary possesses the two years of employment experience required for the offered position and the requested immigrant visa classification.[1] The Director further determined that the Beneficiary willfully misrepresented his employment experience on the accompanying labor certification from the U.S. Department of Labor (DOL). On the Petitioner's subsequent appeal, we withdrew the Director's finding of willful misrepresentation of a material fact. However, we agreed the record did not establish that the Beneficiary has the qualifying experience required for the offered position and the requested classification. In addition, we noted that, while not addressed in the Director's decision, the record does not demonstrate the Petitioner's continuing intent to employ the Beneficiary in the offered position. The Petitioner subsequently filed combined motions to reopen and reconsider, which we dismissed. The matter is now before us again on combined motions to reopen and reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss both 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 prior decision was based on an incorrect

[1] The Director initially revoked the approval of the petition on December 5, 2015, and the Petitioner appealed that decision to our office. In a decision dated March 28, 2022, we withdrew the Director's decision and remanded the matter for consideration of additional evidence and issuance of a new notice of intent to revoke and decision.

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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

II. ANALYSIS

The issue before us on motion is whether the Petitioner has provided proper cause for reopening or reconsideration.

As detailed in our two prior decisions, the Petitioner indicated on the labor certification filed on the Beneficiary's behalf that the offered position of bookkeeper requires two years of experience in the job offered. For the Beneficiary to meet the requirements of both the offered position and the requested classification under section 203(b)(1)(A)(i) of the Act, the Petitioner must establish he possessed at least two years of experience in the job offered prior to August 20, 2001, the priority date for this petition.

On the labor certification, the Beneficiary attested that he was employed as a full-time bookkeeper with a metals company in India from June 1994 to August 1997 and listed no other prior work experience. To corroborate his claimed experience, he has submitted three letters from the Indian company's proprietor (dated in 2000, 2001 and 2010, respectively) stating that he was employed as a bookkeeper between June 6, 1994 and August 25, 1997. While the duties described in these letters include those listed by the Petitioner for the offered bookkeeper position, the letters do not state whether the Beneficiary was employed on a full- or part-time basis, as required by 8 C.F.R. § 204.5(g)(1).

In addition, as explained in our two prior decisions, there are multiple inconsistencies in the record relating to the Beneficiary's identity and date of entry into the United States. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988); *see also Matter of O-M-O-*, 28 I&N Dec. 191, 197 (BIA 2021) ("by submitting fabricated evidence, the appellant compromised the integrity of his entire claim") (cleaned up). In addition to these inconsistencies, we detailed other derogatory factors that diminished the credibility of statements and evidence submitted by the Beneficiary and the foreign entity's proprietor, who is the Beneficiary's brother.[2]

A. Motion to Reopen

In support of the motion to reopen, the Petitioner submits a brief, a newly executed employment letter from his claimed former employer, and copies of certain previously submitted evidence.

[2] Specifically, we noted that the Beneficiary, his spouse and two other family members attempted to enter the United States in 1996 with falsified immigrant visas, which the Beneficiary stated he obtained from his U.S. resident brother. In addition, in May 2011, the Beneficiary's son attested that another brother of the Beneficiary (the Indian company's proprietor) had provided him with false documents for the purpose of applying for a U.S. visitor visa.

The new employment letter, unlike the three letters previously provided, specifies that the Beneficiary held a full-time bookkeeper position with his brother's Indian company. The letter indicates the same employment dates provided in previous letters (June 6, 1994, through August 25, 1997), and adds that the Beneficiary left in July 2017 "but for his good work history we kept his employment and paid him till August 1997."

In its brief, the Petitioner references the new employment letter and states:

> Despite the fact that the AAO has expressed distrust in the credibility of the proprietor of [the Indian company] because he is the Beneficiary's brother, the AAO should find that in the aggregate, the corroboration of other independent business owners, coupled with the Petitioner's consistent attestation and willingness to cooperate as well as the fact that no valid and corroborated proof of a taint in the Beneficiary's good moral character exists, should rise to the level of sufficient evidence to establish the Beneficiary's eligibility for the classification requested.[3]

Upon review, the newly submitted letter from the Beneficiary's claimed former employer, when considered with the evidence already in the record, does not establish that the Beneficiary has the two years of employment experience required for the offered position or for the requested immigrant classification.

The Petitioner asserts that we have expressed "distrust" of statements from the former employer's proprietor because he is the Beneficiary's brother. As discussed in our appellate decision, a petitioner may submit a letter or affidavit containing biased information, but the partiality will affect the evidentiary weight accorded to the document. *See Matter of D-R-*, 25 I&N Dec. 445, 461 (BIA 2011) (citations omitted). But we did not, as suggested in the Petitioner's brief, question the reliability or probative value of the employment letters solely because of the fraternal relationship between the Beneficiary and the proprietor of the Indian company.

Rather, our prior decisions also detailed additional derogatory information that further impacted the evidentiary weight accorded to the letters the Beneficiary's brother provided. Specifically, as explained in the Director's NOIR and in our prior decisions, the Beneficiary's son provided a sworn statement to U.S. officials in India attesting that his uncle (the Beneficiary's brother and the proprietor of the foreign entity) gave him false documents with which to apply for U.S. visitor visas in 2008 and 2009. The fact that the Beneficiary's brother has provided false documents to assist a family member with U.S. visa applications casts doubt on the accuracy and reliability of the employment experience letters in the record.

[3] The Petitioner's mention of "the corroboration of other independent business owners" is a reference to three letters executed by the owners of metal businesses in the same city in India where the Beneficiary claims he worked between 1994 and 1997. These letters were dated in 2023 and submitted for the first time in support of the Petitioner's prior motion. We addressed these letters in our prior decision noting that their probative value was limited, in part, by the passage of almost 30 years since the start of the Beneficiary's claimed employment with the Indian company. We further noted that the letters were not provided by individuals who claimed to have access to the personnel or other administrative records of the business owned by the Petitioner's brother, and that they did not provide a sufficient level of specificity regarding the dates of the Beneficiary's purported employment to corroborate the experience letters from his claimed employer.

The Petitioner also emphasizes that "no valid and corroborated proof of a taint in the Beneficiary's good moral character exists." But the Petitioner has been advised of USCIS records which indicate that the Beneficiary and members of his family attempted to enter the United States in 1996 with falsified immigration documents that he stated he received from another brother who resided in the United States at the time. This incident reasonably casts doubt on the Beneficiary's credibility. *See, e.g., Matter of O-M-O-*, 28 I&N Dec. at 197 ("by submitting fabricated evidence, the appellant compromised the integrity of his entire claim") (cleaned up).

We acknowledge that the new letter from the Beneficiary's claimed former employer states that his employment in India was on a full-time basis, information that was omitted from the three previous letters. The letter also attempts to resolve an inconsistency in the record relating to the date of the Beneficiary's entry into the United States by explaining that the employer kept him on its payroll for an additional month after his departure.[4] However, the letter does not cure the credibility concerns addressed above and at length in our prior decisions and it is insufficient, when considered in the totality of the evidence, to corroborate the Beneficiary's claimed qualifying experience in India.

Finally, we acknowledge the Petitioner's argument that the lengthy revocation process in this matter impaired the Beneficiary's ability to provide additional types of secondary evidence that might have corroborated the employment verification letters in the record. For example, the Petitioner states "it would not have been an issue to provide sworn statements from those individuals with access to payroll and other administrative records of [the foreign employer] twenty (20) years ago, but it is today." We note that the Director initially issued a NOIR in 2010, approximately six years after the approval of the Form I-140. The Petitioner was instructed at that time to provide independent objective evidence to corroborate the Beneficiary's foreign employment but did not do so. The Petitioner's suggestion that it only learned of the need for additional evidence to corroborate the Beneficiary's prior employment more recently, when it claims it was too late to reasonably obtain such evidence, is therefore not supported by the record.

For the reasons discussed, the new evidence submitted on motion does not establish that the Beneficiary had the two years of experience required for the offered position or the underlying immigrant classification at the time the labor certification was filed. Accordingly, the motion to reopen will be dismissed.

[4] The Petitioner stated on the Form I-140, Immigrant Petition for Alien Worker, (filed in 2002) that the Beneficiary last entered the United States without being inspected by an Immigration Officer on September 25, 1997. On his Form I-485, Application to Register Permanent Residence or Adjust Status, filed in May 2005, the Beneficiary indicated that he was last admitted to the United States in B-1 nonimmigrant status on July 27, 1997 using an Indian passport and U.S. visa issued to him under the name M-K-. The record also contains a copy of an Indian passport issued under the Beneficiary's verified legal name (D-P-) which contains a U.S. entry stamp dated April 3, 1998. While the Petitioner and Beneficiary have maintained that the July 27, 1997, date is accurate, we had questioned how he continued working for his employer in India following his entry to the United States, while also noting that the discrepancies regarding his date of entry and identity remained unresolved. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies with independent, objective evidence pointing to where the truth lies).

B. Motion to Reconsider

A motion to reconsider must establish that our prior 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).

With the current motion to reconsider, the Petitioner primarily reargues facts and issues we have already considered in our previous decisions. *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 Board decision").

In its brief, the Petitioner maintains that the discrepancies concerning the Beneficiary's date of entry into the United States are immaterial, noting that regardless of whether he entered in July 1997, September 1997 or April 1998, he would have been able to accrue the requisite two years of experience with his brother's company prior to leaving India. As such, the Petitioner asserts that the record establishes the Beneficiary's eligibility by a preponderance of the evidence, that the Director did not have good and sufficient cause to revoke the approval of his petition based on a lack of qualifying experience, and that we did not have good and sufficient cause to uphold the revocation on appeal and motion.

The "preponderance of the evidence" standard requires that the evidence demonstrate that the claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (quoting *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). The truth is to be determined not by the quantity of evidence alone but by its quality. Thus, in adjudicating the petition pursuant to the preponderance of the evidence standard, USCIS must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

Here, as discussed in greater detail in our prior decisions, the multiple discrepancies in the record, including those concerning the Beneficiary's identity and date of entry to the United States, in addition to the credibility concerns addressed above, justified a reevaluation of the reliability and probative value of other evidence in the record, including the work experience letters provided by the Beneficiary's brother on behalf of the claimed former employer. Further, where there are unresolved inconsistencies in the record, it is the Petitioner's burden to resolve them with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, I&N Dec. at 591-92. Considering the facts presented, the Petitioner has not demonstrated that we failed to apply the preponderance of the evidence standard by requiring that it submit independent, objective evidence to corroborate the experience letters.

The Petitioner also maintains that in our decision dismissing the previous motion, we continued to "erroneously allege that [the Beneficiary] left the U.S. in 1998 and later re-entered," emphasizing that he entered in 1997, overstayed his B-1 visa, and never departed. The Petitioner asserts that the April 3, 1998, U.S. entry stamp referenced by USCIS "has no validity in creating a presumption of material discrepancy because it shows no relation to [the Beneficiary's] passport." Specifically, the Petitioner

emphasizes that "the top of the passport page with the stamp on it dated April 3, 1998, does not contain [the Beneficiary's] passport number perforated onto the page like pages 18 through 37 do." The Petitioner appears to be suggesting that the copy of the passport page bearing the entry stamp is not a page from the Beneficiary's passport.

The record indicates that the Beneficiary submitted a complete photocopy of the Indian passport in question as supporting evidence with his Form I-485, Application to Register Permanent Residence or Adjust Status, filed in May 2005. The passport number that appears on the biographical page of the passport is stamped or perforated into pages 22 through 37, but does not appear on earlier pages, including page 13, where the April 3, 1998 U.S. entry stamp was placed. The Beneficiary submitted this document, in its entirety, as a true and correct copy of his current Indian passport, issued to him on February 27, 1997. Therefore, the Petitioner's claim that the passport page with the April 3, 1998 entry stamp "shows no relation" to the Beneficiary's passport or "has no validity" is not persuasive. If the photocopied pages were not, in fact, all from the same passport or there is some other anomaly, then responsibility for any irregularities would reasonably fall on the Beneficiary.

The Petitioner further asserts that affidavits that are already in the record should be sufficient to resolve any perceived inconsistencies regarding the Beneficiary's identity. The accuracy of the information provided in the Beneficiary's birth certificate has been corroborated by authorities in India and therefore his true name, date and place of birth are known. The Beneficiary submitted an affidavit explaining his use of a different name in India with the initials M-K- and provides some evidence he reported the name as an alias or name change to the Indian government. However, the record does not provide an explanation for his use of a different date and place of birth when applying for an Indian passport and U.S. visa using the name "M-K-" and this discrepancy remains unresolved.

For the reasons discussed, the Petitioner has not demonstrated that we misapplied the law or USCIS policy in concluding that the record does not demonstrate that the Beneficiary possesses the required two years of experience.

Finally, the Petitioner asserts that we erred in determining that it has not shown its continued intent to employ the Beneficiary.[5] However, as the Petitioner has not overcome the issue that formed the basis for the Director's revocation decision, we need not reach and therefore reserve this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N

[5] In our decision dismissing the appeal, we advised the Petitioner that state records showed that the petitioning corporation voluntarily dissolved in [redacted] 2022, shortly before it filed the appeal. *See* Sec'y of the Commonwealth of Mass., Corps. Div., "Search for a Business Entity," https://corp.sec.state.ma.us/corpweb/CorpSearch/CorpSearch.aspx. Although the state revoked the dissolution 10 days later, government records list a new address for the company's principal office and a new sole officer, suggesting new ownership, management, or both. *Id.* Also, local records show that, in late 2021, the Petitioner transferred its liquor store license to a different company at a different address. [redacted] Bd. of License Comm'rs Minutes, 2 (Nov. 9, 2021). The local records suggest that the company no longer operates a liquor store as stated on the labor certification. We therefore determined that the record did not demonstrate the Petitioner's continuing intent to employ the Beneficiary in the offered position, and advised the Petitioner that it should address the issue in any future filings. We advised the Petitioner that "in any future filings in this matter, the company must submit evidence that it intends to do business in the future and employ the Beneficiary in the offered position."

Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.