U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10985073

Date: SEPT. 3, 2020

Motions on Administrative Appeals Office Decision

Form I-140, Immigrant Petitioner for Professional

The Petitioner seeks to employ the Beneficiary as a corporate trainer under the third-preference, immigrant classification for members of the professions. See Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii).

The Director of the Texas Service Center denied the petition, and we dismissed the Petitioner's following appeal. See In Re: 6059157 (AAO Feb. 19, 2020). We concluded that the Petitioner demonstrated the Beneficiary's educational qualifications for the offered position, but not her possession of the minimum employment experience required for the job. Id.

The matter is again before us on the Petitioner's motions to reopen and reconsider. As we do not believe supplemental argument would aid us in this decision, we deny the Petitioner's request for oral argument. See 8 C.F.R. § 103.3(b). Upon review, we will dismiss the motions.

I. MOTIONS CRITERIA

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must establish that our prior decision misapplied law or U.S. Citizenship and Immigration Services (USCIS) policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant motions that meet these criteria and establish eligibility for the requested benefit.

II. MOTION TO RECONSIDER

On motion, the Petitioner does not assert that our appellate decision misapplied law or USCIS policy. As the motion does not meet applicable requirements, we must dismiss it. See 8 C.F.R. § 103.5(a)(4).

III. MOTION TO REOPEN

In support of the Beneficiary's claimed, qualifying experience, the Petitioner submits letters from the Beneficiary's purported former employers. See 8 C.F.R. § 204.5(l)(3)(ii)(A) (requiring a petitioner to submit letters from a beneficiary's former employers). A letter from a healthcare firm states its

employment of the Beneficiary as a corporate trainer in Turkey for about 26 months, from November 2010 to January 2013. The Petitioner argues that the letter demonstrates the Beneficiary's possession of the required two years of experience in the offered position of corporate trainer.[1]

The Petitioner, however, has not resolved inconsistencies of record regarding the Beneficiary's purported employment by the healthcare firm. As discussed in our appellate decision, the Petitioner initially provided a letter from the firm stating its employment of the Beneficiary from November 2010 to January 2013 "as a corporate trainer and project coordinator." (emphasis added). Thus, the initial letter suggested the firm's employment of the Beneficiary during her tenure in two positions. Her possible dual positions cast doubt on whether she gained at least two years of experience in the offered position of corporate trainer. See Matter of Ho, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies). A copy of the Beneficiary's employment agreement with the firm similarly states her hiring "as PROJECT MANAGER and CORPORATE TRAINER" (emphasis in original). The record on motion does not document or explain the Beneficiary's other apparent roles with the firm as project manager and project coordinator. The firm's letter therefore does not demonstrate the Beneficiary's acquisition of the requisite experience in the offered position of corporate trainer.

The Petitioner also submits letters from the Beneficiary's other claimed former employer: a Turkish cosmetics company. One letter states the company's employment of the Beneficiary as a corporate trainer for about 27 months, from February 2008 through May 2010. The other letter states her prior work for the company as a brand manager, from November 2004 through January 2008.

The Petitioner could have submitted these letters in response to the Director's written notice of intent to deny the petition. We therefore decline to consider them on motion. See Matter of Soriano, 19 I&N Dec. 764, 766 (BIA 1988) (barring consideration of evidence on appeal where a petitioner received prior notice of the required materials and a reasonable opportunity to provide them). Even if we considered the letters, they would not establish the Beneficiary's qualifying experience for the offered position. The letter describing the Beneficiary's employment as a brand manager does not demonstrate her performance of the job duties of the offered position of corporate trainer. The letter therefore does not establish the Beneficiary's qualifying experience for the offered position. See, e.g., Matter of Symbioun Techs., Inc., 2010-PER-01422, slip op. at *4 (BALCA Oct. 24, 2011) (holding that experience "in the job offered" on a labor certification means "experience performing the key duties of the job opportunity").

In addition, the letter describing the Beneficiary's employment as a corporate trainer conflicts with information she provided on a prior U.S. nonimmigrant application. On the 2009 visa application, the Beneficiary attested that she worked as a brand manager for [redacted] a company with a different name than the cosmetics firm. The discrepancies in the employer's name and the Beneficiary's position title cast doubt on her claimed qualifying experience as a corporate trainer with the cosmetics company from February 2008 through May 2010. See Matter of Ho, 19 I&N Dec. at

[1] The accompanying labor certification from the U.S. Department of Labor in this matter states that the Petitioner will not accept experience in an alternate occupation.

591 (requiring a petitioner to resolve inconsistencies of record). Thus, the cosmetics company's second letter also does not establish the Beneficiary's qualifying experience for the offered position.[2]

IV. CONCLUSION

The motion to reconsider does not meet regulatory requirements. The motion to reopen does not establish the Beneficiary's possession of the minimum experience required for the offered position. We will therefore affirm the appeal's dismissal and the petition's denial.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.

[2] Our appellate decision required future filings of the Petitioner in this matter to demonstrate the company's ability to pay the proffered wage of the offered position in 2018, the year of the petition's priority date. See 8 C.F.R. § 204.5(g)(2). On motion, the Petitioner submits evidence meeting this requirement. The record therefore establishes the Petitioner's ability to pay the proffered wage.