U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25409520

Date: MAY 15, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a travel agency, seeks to employ the Beneficiary as a manager of travel and tours. It requests classification of the Beneficiary under the third-preference, immigrant category as a skilled worker. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based category allows a U.S. business to sponsor a foreign national for lawful permanent resident status based on a job offer requiring at least two years of training or experience.

The petition was initially approved by the Director of the Texas Service Center on May 10, 2006. The approval was subsequently revoked on November 30, 2009, by the Director of the Nebraska Service Center, on multiple grounds. The Director found that the Petitioner committed fraud or willfully misrepresented material facts in the labor certification with respect to its work address and the familial relationship between the Beneficiary and the Petitioner's owner/corporate officers. Based on the finding of fraud or willful misrepresentation of material facts the Director invalidated the labor certification and revoked the approval of the petition on the ground that it was not supported by a valid labor certification. As an additional ground for denial, the Director found that the Petitioner did not establish its ability to pay the proffered wage in the years 2006, 2007, and 2008, and thus did not establish its continuing ability to pay the proffered wage from the priority date of November 2, 2005, onward.

The Petitioner filed an appeal, which we dismissed. Since the petition's revocation in 2009, over the course of the last 13 years the Petitioner has filed 14 combined motions to reopen and reconsider. We dismissed the prior 13 combined motions. The matter is now before us on a motion to reopen and reconsider our prior decision.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. *See also Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion to reopen and reconsider.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, "new facts" are facts that are relevant to the issue(s) raised on motion and

that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

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). We do not consider new facts or evidence in a motion to reconsider.

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110.

By regulation, the scope of a motion is limited to the "prior decision." 8 C.F.R. § 103.5(a)(1)(i). Therefore, the filing before us is not amotion to reopen and reconsider the denial of the petition. Instead, it is a motion to reopen and reconsider our most recent decision, the September 22, 2022, dismissal of the Petitioner's thirteenth motion. Accordingly, we examine any new facts and arguments to the extent that they pertain to our prior dismissal of the Petitioner's combined motion.

On motion, the Petitioner submits a brief from counsel with no new evidence. The Petitioner states that our September 22, 2022 dismissal of the combined motion "fails to provide a novel reason for continuing to deny the Petitioner's motions. Rather, the denial relies exclusively on past arguments, each of which has been previously addressed." The Petitioner then presents the same arguments previously made: 1) that it provided sufficient evidence of its ability to pay the proffered wage from 2006 to 2008, and 2) that it did not engage in fraud or willful misrepresentation of material facts in the labor certification.

We will dismiss the Petitioner's motion to reopen. The Petitioner presents no new facts and the motion is not supported by any documentary evidence. As such, the Petitioner has not demonstrated that its filing meets the motion to reopen requirements. *See* 8 C.F.R. § 103.5(a)(2); *see also* 8 C.F.R. § 103.5(a)(1)(i) (nothing that the scope of a motion is limited to "the prior decision").

Similarly, we will dismiss the Petitioner's motion to reconsider. The Petitioner does not demonstrate that our prior decision was based on an incorrect application of law or USCIS policy or was incorrect based on the evidence before us when we issued the motion decision. As such, the Petitioner has not demonstrated that its filing meets the motion to reconsider requirements. *See* 8 C.F.R. § 103.5(a)(3).

For the reasons discussed above, the Petitioner has not shown proper cause for reopening the proceedings or reconsideration of our prior decision(s). Therefore, the Petitioner has not established eligibility for the benefit sought.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.