U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 20175678

Date: MAY. 20, 2022

Motion on Administrative Appeals Office Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner describes itself as a provider of lab testing services. It seeks to permanently employ the Beneficiary as its chief executive officer and president under the first preference immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish, as required, that: (1) the Beneficiary would be employed in the United States in a managerial or executive capacity, (2) the Beneficiary was employed abroad in a managerial or executive capacity, (3) the Petitioner was doing business as defined by the regulations, (4) the Petitioner had the ability to pay the Beneficiary's proffered wage, and (5) the foreign employer was doing business.

We affirmed the Director's adverse decision and dismissed the appeal, noting that the Petitioner had only specifically addressed one of the five grounds of denial and thereby abandoned any challenge of the four remaining grounds, each of which was independently dispositive of the appeal. In addition, we affirmed the Director's determination that the Petitioner did not establish that it had the ability to pay the Beneficiary's proffered wage. The Petitioner later filed a motion to reopen and a motion to reconsider, which we also dismissed. The matter is now before us again on a motion to reconsider.

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. Upon review, we will dismiss the Petitioner's motions.

## I. MOTION TO RECONSIDER

A motion to reconsider must establish that our decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) 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 may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reconsideration, a petitioner must

not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet the applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

## II. ANALYSIS

The issue to be addressed in this decision is whether the Petitioner established that our decision to dismiss the prior motion to reopen and motion to reconsider was based on an incorrect application of law or USCIS policy based on the facts on the record at that time. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing[1] and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). As a preliminary matter, we note that the review of any motion is narrowly limited to the basis for the prior adverse decision.

In our prior decision, we dismissed the Petitioner's motion to reopen, determining that the evidence submitted on motion had already been submitted and provided no additional insight regarding its ability to pay the Beneficiary's proffered wage and its apparent abandonment of four of the five issues dispositive issues on appeal. We further indicated that our adverse conclusion regarding the Petitioner's ability to pay pertained specifically to 2018, while the provided wage and tax documents were from 2016 and 2017, years where the Petitioner's ability was not at issue. Therefore, we dismissed the motion to reopen.

We also dismissed the motion to reconsider, concluding that the appeal brief was reviewed and fully considered when previously before us. We again indicated that the only issue the Petitioner fully addressed on appeal was that of the Beneficiary's proposed employment in the United States in a managerial and executive capacity. We noted that the Petitioner did not offer specific arguments or evidence to address four of the previously listed grounds for denial. Therefore, we concluded that we were correct in declining to address the Petitioner's appellate arguments regarding the Beneficiary's U.S. employment in a managerial or executive capacity, and further, that this abandonment of the issues alone represented grounds to dismiss the appeal.

In addition, we noted that we had provided a comprehensive analysis of the evidence and explained how the Petitioner had not established its ability to pay the Beneficiary's wage as required the regulation at 8 C.F.R. § 204.5(g)(2).[2] We indicated that the Petitioner did not cite specific law or policy to support that our determination regarding its inability to pay the Beneficiary's wage was incorrect, and noted that the evidence submitted on motion was specific to 2016 and 2017, years not at issue with respect to its ability to pay. In sum, we concluded that the Petitioner had not sufficiently explained how our prior decision was incorrect or how we misapplied law or policy in reaching that decision.

In support of this motion to reconsider, the Petitioner contends that we were mistaken in concluding that it had not submitted evidence and contentions addressing all five grounds of the Director denial.

[1] The petition was filed in November 2016 and the current motion to reconsider was filed in August 2021.

[2] The regulation at 8 C.F.R. § 204.5(g)(2) states "the petitioner must demonstrate this ability [to pay] at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence."

The Petitioner contends that we were required to review the record *de novo* and asserts that we overlooked extensive memorandums and material evidence addressing all the five grounds for denial discussed by the Director. The Petitioner states that we should "avoid unnecessary APA and judicial review" and "refer to the record in its entirety." The Petitioner points to its appeal brief dated in July 2020, its assertions and the evidence provided in response to the Director's request for evidence, and a memorandum it submitted in support of the petition in November 2016.

The Petitioner has not sufficiently articulated how our prior decision was inconsistent with applicable law or policy as necessary to meet the requirements of a motion to reconsider. The Petitioner appears to contend that we did not provide a *de novo* review of the record, which is not correct, as the record was reviewed in its entirety on appeal. As noted in our prior decisions, the Petitioner provided an appeal brief, again submitted in support of this motion, that did not specifically address four of the five grounds for the denial of the petition, but only discussed the Beneficiary's asserted managerial or executive capacity in the United States. The Petitioner still provides no basis in law or policy as to why the grounds it did not specifically address on appeal are not considered abandoned.[3] Therefore, our decision to affirm the Director's decision was proper and consistent with applicable law, as was as our later decision to dismiss its motions on this basis. As we discussed, this issue alone is dispositive of the matter, and we were correct to dismiss the prior motions on this basis.

Further, the Petitioner does not articulate on motion how our analysis and dismissal of the prior appeal, and motions, on the basis that it did not demonstrate the ability to pay was inconsistent with applicable law or policy.[4] For instance, in our appeal decision, we agreed with the Director's determination that the Petitioner did not establish ability to pay since it did not demonstrate it had paid the Beneficiary's proffered wage in 2018. We indicated that the Petitioner had only paid the Beneficiary $44,700 of his proffered wage of $70,000 in 2018. Further, we noted that the Petitioner's most recent 2018 IRS Form 1120, U.S. Corporation Income Tax Return, reflected a net taxable income of -$74,162, as well as net assets of $24,496 and net liabilities of $5027 as of the end of 2018.[5] Therefore, the 2018 IRS Form 1120 reflected that the Petitioner did not have sufficient income or assets to account for the shortfall

---

[3] As we have indicated in our prior decisions, when an appellant fails to properly challenge one of the independent grounds upon which the Director based the overall determination, the filing party has abandoned any challenge of that ground. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014); *United States v. Cooper*, No. 17-11548, 2019 WL 2414405, at *3 (11th Cir. June 10, 2019); *McCray v. Fed. Home Loan Mortg. Corp.*, 839 F.3d 354, 361-62 (4th Cir. 2016); *In re Under Seal*, 749 F.3d 276, 293 (4th Cir. 2014) (finding "an appellant must convince us that every stated ground for the judgment against him is incorrect."); *United States v. Kama*, 394 F.3d 1236, 1238 (9th Cir. 2005). We concluded that the Petitioner's failure to address four of the grounds in the denial resulted in its abandonment of those grounds, thereby precluding the Petitioner from being able to prevail on appeal. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

[4] The Petitioner appears to suggest that we should "avoid unnecessary APA and judicial review." The Petitioner provides no legal basis for is assertion. Our decision to only address one dispositive issue and reserve the others (several of which the Petitioner had abandoned) is supported by applicable law and policy. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

[5] Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Rest. Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Haw., Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

in the payment of the Beneficiary's proffered wage. As such, we concluded the Director was correct to deny the petition and determined that the Petitioner did not establish the ability to pay the Beneficiary's proffered wage at the time the priority date was established and continuing until he obtains lawful permanent residence. *See* 8 C.F.R. § 204.5(g)(2). In support of this motion, the Petitioner again provides no specific contentions or basis in applicable law or policy as to why this conclusion by the Director, or us, was incorrect. For this additional reason, the Petitioner has not met the requirements of a motion to reconsider.

For the reasons discussed, the Petitioner has not shown proper cause for reconsideration by demonstrating that our prior dismissal of its motions was inconsistent with applicable law or policy.

**ORDER:** The motion to reconsider is dismissed.