U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28255752

Date: AUG. 24, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a provider of health care products and services, seeks to employ the Beneficiary as an area immunoassay and clinical chemistry specialist. It requests his classification as a skilled worker under the third preference immigrant classification. 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 denied the petition, concluding that the record did not establish that the Beneficiary met the minimum education requirements stated on the labor certification. We dismissed the Petitioner's appeal of the Director's decision. The Petitioner subsequently filed a combined motion to reopen and reconsider, followed by two motions to reconsider, and we dismissed all three motions. The matter is now before us on motion to reconsider. 8 C.F.R. § 103.5(a).

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 the motion.

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). 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.

As noted, the Director denied the Form I-140 based on a determination that the record did not establish the Beneficiary met the minimum education requirements for the offered position as stated on the labor certification.[1] In dismissing the Petitioner's appeal and three subsequent motions, we have considered

[1] Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification (ETA Form 9089) from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). Second, the employer files an immigrant visa petition (Form I-140) with U.S. Citizenship and Immigration

the Petitioner's legal arguments, as well as additional evidence submitted in support of the Petitioner's motion to reopen, which included evidence of its recruitment efforts. Our prior decisions are part of the record of proceeding and are incorporated here by reference. Consistent with the Director's decision, we have concluded that the labor certification accompanying this petition, when viewed as a whole, indicates that the position requires a U.S. bachelor's degree or foreign equivalent degree as a minimum education requirement. The record reflects the Beneficiary, whose foreign degree is equivalent to two and one-half years of undergraduate study, does not possess such a degree and therefore does not meet the stated minimum requirements. A beneficiary must meet all the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

In our latest decision dismissing the Petitioner's third motion, we concluded it did not establish, as required by 8 C.F.R. § 103.5(a)(3), that we incorrectly applied the law or USCIS policy in our decision dismissing its second motion. Rather, we determined that the Petitioner's motion to reconsider reiterated legal arguments and cited to non-binding authorities that we had previously reviewed and addressed in our two prior decisions.

With this fourth motion, the Petitioner contests the correctness of our prior adverse decisions and asserts that we have continually erred in upholding the denial of this petition. Its brief is substantially similar in content to the briefs provided in support of its three previous motions to reconsider, and we have thoroughly addressed the legal arguments made in our decisions. The Petitioner does not articulate or demonstrate how we misapplied the law or USCIS policy in our decision dated January 25, 2023. While the Petitioner continues to disagree with USCIS' assessment of the stated minimum requirements for the offered position as stated on the labor certification, it has not raised any additional legal arguments in support of its own interpretation of those requirements.

In sum, the Petitioner's contentions in the current motion merely reargue 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"). The Petitioner has not shown proper cause for reconsideration of our prior decision. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reconsider is dismissed.

Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the beneficiary may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.