



**U.S. Citizenship  
and Immigration  
Services**

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

In Re: 26807976

Date: MAY 24, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a clothing manufacturer, seeks to employ the Beneficiary as a sewing machine operator. It requests classification of the Beneficiary as a skilled worker under the third preference employment-based immigrant visa category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This immigrant visa category 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 the Petitioner did not establish its ability to pay the proffered wage; that the Beneficiary possessed the required experience for the offered position; that there existed a bona fide job opportunity for the Beneficiary with the Petitioner; and that the Petitioner is still doing business or has a successor-in-interest. The Director also made a finding that the Petitioner willfully misrepresented a material fact relating to the Beneficiary's employment history. The Petitioner later filed an appeal that we rejected and then filed a motion to reopen and a motion to reconsider that we dismissed. The matter is now before us again on a motion to reopen and a motion to 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 the motion.

**I. MOTION TO REOPEN**

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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).

In our prior decision, we dismissed the motion to reopen and the motion to reconsider concluding the party that filed these motions was not an affected party. For instance, the Form I-290B, Notice of Appeal or Motion was filed by [redacted] President of [redacted]

[redacted], while the original petition was filed by [redacted] (the Petitioner). Prior to this dismissal, we issued a decision in April 2022 rejecting [redacted] prior appeal, again concluding that it was not an affected party. More specifically, we determined that [redacted] had not sufficiently demonstrated that it was a successor-in-interest to the petition filed by the Petitioner in 2007. In making this determination, we reasoned that the companies were separate legal entities and had not submitted sufficient evidence to establish that [redacted] had acquired all, or substantially all, of the Petitioner's business. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986), *see generally*, 6 *USCIS Policy Manual* E.3, <https://www.uscis.gov/policy-manual/volume-6-part-e-chapter-3>. In addition, we indicated that the successor-in-interest issue had been raised multiple times, including through a notice of intent to reject issued by us, and that neither [redacted] or the Petitioner had provided a sufficient explanation and documentation to establish the claimed successor-in-interest relationship.

On motion, the Petitioner submits an affidavit from its former owner and the former owner of [redacted]. The former owner indicates that he retained ownership of both companies while the business transferred from the Petitioner to [redacted] and states that the Petitioner wound down its operations while the latter started operations. The former owner further explains that he "continued to use the same production equipment and...hire the same employees" and noted that his suppliers and buyers were aware of the transition. In addition, he states that he "did not know that there could be a necessity to make legal documentations [*sic*] between myself and another myself, such as a name change registration of the businesses." He indicates his "genuine intent to transit [*sic*] the two businesses from one [to] another."

As previously noted, the successor-in-interest issue has been raised with the Petitioner and [redacted] multiple times and we requested a detailed explanation and documentation of the claimed successor-in-interest relationship through a specific evidentiary request. Even if the newly submitted affidavit submitted by the Petitioner was sufficient to demonstrate [redacted] as a successor-in-interest, which it is not, we decline to consider this new evidence since we previously requested all evidence necessary to establish this relationship in our prior notice of intent to reject (NOIR). We are not required to consider evidence if the affected party was put on notice of the specific evidentiary requirement, given a reasonable opportunity to provide the evidence, and the evidence was reasonably available to the affected party at the time it was supposed to have been submitted. 8 C.F.R. § 103.2(b)(11). For this reason alone, the Petitioner has not met the requirements of a motion to reopen by submitting new facts supported by documentary evidence, and the motion must be dismissed.

Regardless, the latest affidavit does little to overcome our prior determinations with respect to [redacted] as a legitimate successor-in-interest to this petition. The Petitioner has submitted no documentation to substantiate a legal transfer of substantially all of its assets to [redacted] such as a merger agreement, purchase agreement, or other such legitimate legal documentation. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. at 481, *see generally*, 6 *USCIS Policy Manual* E.3, <https://www.uscis.gov/policy-manual/volume-6-part-e-chapter-3>. The former owner of both companies appears to acknowledge on motion that this documentation does not exist, leaving substantial question as to whether such a transfer ever legally occurred. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The former owner's lack of knowledge of such documentation being required does not absolve the companies from properly documenting and legally effectuating a transfer. Again, the record

reflects that the Petitioner and the [REDACTED] were separate legal entities, and the record does not contain sufficient evidence to establish that there was a transaction that resulted in [REDACTED] acquiring all, or substantially all, of the Petitioner's business. For the foregoing reasons, the motion to reopen must be dismissed.

## II. 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). 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.

On motion, the Petitioner contends that "a USCIS Memorandum...acknowledges successor-in-interest where there is no registration with the U.S. government" and that it "provides a definition for successor-in-interest...intended to provide flexibility for legitimate successor-in-interest scenarios." First, the Petitioner does not articulate to what memorandum it refers, or further to what portion of this document it relies upon for its legal assertions with respect to successor-in-interest. The Petitioner also does not clearly indicate how our prior determinations were incorrect based on this interpretation of law or policy. *See* 8 C.F.R. § 103.5(a)(3). In addition, our prior determination that [REDACTED] was not established as a legitimate successor-in-interest to this matter was not based on a "lack of registration with the U.S. government," but the lack of documentation to substantiate that the Petitioner legally transferred ownership to [REDACTED]

Therefore, 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 motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

## III. ELIGIBILITY FOR THE BENEFIT SOUGHT

In our decision from April 2022, we agreed with the Director's conclusion that the evidence in the record did not establish: (a) the Petitioner's continuing ability to pay the proffered wage from the priority date; and (b) that the Beneficiary possessed the required experience for the offered position as set forth on the labor certification. We also agreed with the Director's finding that the Petitioner and the Beneficiary willfully misrepresented material facts regarding the Beneficiary's claimed employment experience. As our rejection of the appeal and determination that [REDACTED] was not a successor-in-interest to the petition was dispositive, we declined to reach and reserved these issues. *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).

On motion, and in support of the prior set of motions, the Petitioner has not, and did not, address the Director's, or our, conclusions with respect to the Beneficiary's eligibility, nor did it address the Director's conclusion that the Petitioner and the Beneficiary willfully misrepresented material facts regarding the Beneficiary's claimed employment experience. As previously noted, we may only grant

motions that demonstrate eligibility for the requested benefit. Therefore, since the Petitioner has not demonstrated the Beneficiary's eligibility for the benefit sought on motion, the motions must be dismissed for this additional reason.

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

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