



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

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

MATTER OF TV-I-, INC.

DATE: MAY. 1, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an information technology firm, seeks to employ the Beneficiary as a senior SAP manager. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. *See* Immigration and Nationality Act, section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center revoked the approval of the petition, finding that the Petitioner had misrepresented its relationship to the Beneficiary and that the offered position was not a *bona fide* job opportunity. The Director, therefore, also invalidated the labor certification.

On appeal, we upheld the Director's decision with respect to the revocation of the petition's approval, as we found the record did not establish the offered position as a *bona fide* job opportunity, i.e., clearly open to U.S. workers, or that the Beneficiary held the academic credential required by the labor certification. At the same time, we concluded that the record did not demonstrate that the Petitioner had misrepresented its relationship to the Beneficiary during the labor certification process and reinstated the validity of the labor certification.

Subsequently, the Petitioner filed a combined motion to reopen and motion to reconsider, maintaining that we lacked the authority to determine the *bona fides* of the offered position and that the Beneficiary held the equivalent of a master's degree. We denied the Petitioner's motion to reconsider, finding case law, statute, and Congressional intent to support our authority to determine the *bona fides* of the job opportunity. We denied the Petitioner's motion to reopen as the evaluations of the Beneficiary's experience and education did not establish that he met the labor certification's degree requirement.

The matter is once again before us on a motion to reopen and motion to reconsider. Upon review, we will deny both motions.

I. LAW

A motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law or policy*. The requirements of a motion to reopen are

located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 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.

II. ANALYSIS

A. 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). The regulation at 8 C.F.R. § 103.5(a)(2) does not define what constitutes a new fact, nor does it mirror the Board of Immigration Appeals' (the Board) definition of "new" at 8 C.F.R. § 1003.23(b)(3) (stating that a motion to reopen will not be granted unless the evidence "was not available and could not have been discovered or presented at the former hearing"). Unlike the Board, we do not require the evidence of a new fact to have been previously unavailable or undiscoverable. Instead, we interpret new facts to mean facts that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes those provided with the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute new facts.

Here, as on appeal and on prior motion, the Petitioner asserts that the offered position is a *bona fide* job opportunity and that the Beneficiary is not involved in its management and had no control or influence over the hiring process for the offered position. Having reviewed the brief and evidence submitted in support of its current motions, we do not find the Petitioner offered new arguments or provided evidence not previously considered. Our review of the record finds the Petitioner reiterated the arguments it made on appeal and on prior motion to establish the Beneficiary's lack of control or influence over its hiring process for the offered position, arguments that were fully addressed in our dismissal of the appeal and denial of the prior motion. Further, a review of the evidence submitted in support of these arguments finds it is the evidence the Petitioner has already provided, on motion, on appeal, or in response to our Notice of Intent to Dismiss and Request for Evidence. Therefore, the Petitioner has not submitted the new facts required by 8 C.F.R. § 103.5(a)(2), and the motion to reopen must be denied.

B. Motion to Reconsider

A motion to reconsider must establish that the 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 proceeding at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security (DHS) policy.

In its current motion, the Petitioner again raises what it finds to be the unfairness of USCIS' reliance on the credentials advice provided by the Electronic Database for Global Education (EDGE) to find

that the Beneficiary does not hold the foreign equivalent degree to the U.S. master's in engineering, operations or information systems required by the labor certification. The Petitioner once again maintains that, in 2006, when it filed the labor certification, the Beneficiary's bachelor's degree in mathematics and master's degree in operational research were equivalent to a U.S. master's degree and that, as EDGE was not in "commercial use" until 2007, it was unfair to apply "today's educational standards" to the Beneficiary.

We do not, however, find the Petitioner's assertion regarding USCIS' use of EDGE, which we addressed in our dismissal of the appeal and on prior motion, to constitute an incorrect application of law or policy in this matter. Further, the Petitioner has not supported the motion with a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of USCIS or DHS policy. Nor does the Petitioner submit evidence to establish that our decision with regard to the Beneficiary's academic credentials was incorrect based on the evidence in the record of proceeding at the time we dismissed the appeal.

III. CONCLUSION

The Petitioner in this case has filed a motion to reopen and motion to reconsider. However, for the reasons discussed above, neither filing meets the regulatory requirements at 8 C.F.R. § 103.5(a).

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.