U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30390646

Date: MAR. 7, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a financial controller, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed a subsequent appeal. The matter is now before us on motion to reopen.

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.

The Petitioner indicated on the Form I-290B, Notice of Appeal or Motion, and in an accompanying brief, that the current submission is an appeal of our decision to dismiss the prior appeal. However, the regulations do not provide for appeals of appeals. *See generally* 8 C.F.R. § 103.3. The Petitioner also asserts, "The purpose of this appeal is to kindly request the AAO to reconsider the non-precedent decision . . . for my case." The Petitioner does not identify a relevant law or policy that we may have misapplied; therefore, the submission does not satisfy the prima facie elements of a motion to reconsider, in the alternative. *See* 8 C.F.R. § 103.5(a)(3) (requiring a motion to reconsider to 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). Because the current submission cannot be an appeal of an appeal, and because it does not satisfy the prima facie

elements of a motion to reconsider, in the alternative, we consider it to be a motion to reopen, as described at 8 C.F.R. § 103.5(a)(2).

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).

On motion, the Petitioner submits a copy of a list he describes as "the 2023 conditional . . . payroll report" for his employer. The Petitioner asserts the list indicates his employer "has hired a total of 45 U.S.-based employees in Texas during 2022 and 2023, with an average monthly cost of USD 675 thousand." The Petitioner further states that this "feat would be unattainable without rigorous budget control by [him and his] finance team." The Petitioner also submits a copy of a list he asserts demonstrates "engagement with 80 U.S. vendors including hundreds of employees . . . with a total cost of USD 188 million since October 2022, [which] underscores the significant economic impact generated by my role."

Contrary to the Petitioner's assertions, the list of individuals does not establish that his employer—or any employer—has hired any of the 45 workers it itemizes, or the location where any of the individuals work. Instead, the single-page list provides the names of individuals, corresponding position titles, either the word "employee" or "contractor," and a corresponding "monthly cost." The list does not establish that an employer-employee relationship exists between any of those individuals and any entity. Moreover, the list does not clarify whether "monthly cost" means wages paid to the corresponding individual, as opposed to the cost of providing a workspace for the individual on a monthly basis, or any other possible meaning of "monthly cost."

Relatedly, the document the Petitioner describes as a list of vendors does not establish that the Petitioner or his employer has "engage[d] with 80 U.S. vendors," the number of workers those vendors may employ, and the revenue this generalized "engagement" may have generated, as the Petitioner asserts. Instead, the one-page list provides apparent entity names under the heading of "Row Labels" and series of numbers under the heading of "Sum of Net." The list does not indicate that the numbers represent dollar amounts and, even if it did, the significance of the series of numbers is not apparent.

Setting aside the substantive deficiencies discussed above, neither list indicates who created them, how the author(s) had personal knowledge of the information described in the lists, the purpose for which the lists were created, or other elements that may authenticate them. Although the lists include the initials of the Petitioner's employer in the bottom margin, they do not otherwise bear indicia that they originated within that company and, thus, are authentic representations of that company's information. Moreover, the purported employee and contractor list is typed in a serif font, whereas the purported vendor list is typed in a sans-serif font, with other formatting inconsistencies that do not support the conclusion that the lists belong to the same system of record keeping. These issues cast doubt on the veracity of the lists, which undermines their reliability and sufficiency even further. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (providing that doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of evidence offered in support of the visa petition).

We note that, on motion, the Petitioner also reiterates information already in the record regarding his employment history, and generalized information regarding financial management and the oil and gas industry. However, a motion to reopen must state new facts and be supported by documentary evidence, rather than reiterate information already in the record. 8 C.F.R. § 103.5(a)(2). Accordingly, we need not further discuss the information already in the record, which we addressed in our decision dismissing the appeal.

In summation, the Petitioner has not provided a new, probative fact to establish that we erred in dismissing the appeal. Because the Petitioner has not established a new fact that would warrant reopening of the proceeding, the motion to reopen will be dismissed. *See* 8 C.F.R. § 103.5(a)(2), (4).

ORDER: The motion to reopen is dismissed.