



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

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

MATTER OF B-H-E-, INC.

DATE: MAR. 14, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, an electrical contractor, seeks to temporarily employ the Beneficiary as a "business manager" under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director, California Service Center, denied the petition. The Petitioner appealed the denial, which we dismissed on the basis that the Petitioner had not established that the proffered position qualifies as a specialty occupation. The Petitioner filed three motions to reconsider, all of which we denied.

The matter is once again before us on another motion to reconsider. In its motion, the Petitioner asserts that our prior decisions should be reversed. We will deny the motion.

I. MOTION REQUIREMENTS

To merit reopening or reconsideration, a petitioner must meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1).

A motion to reconsider is based on legal grounds and must (1) state the reasons for reconsideration; (2) be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy; and (3) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

II. ANALYSIS

For the reasons discussed below, the motion to reconsider will be denied.

On this motion, the Petitioner asserts that we should have approved the underlying petition in this matter because it was an extension petition. The Petitioner refers to a memorandum authored by William R. Yates (Yates memo), and asserts that according to the memo, we should have given deference to prior approvals since there were no material changes in the underlying facts.

We find that the Yates memo does not indicate that adjudicators should approve an extension petition where the facts of the record do not demonstrate eligibility for the benefit sought. On the contrary, the Yates memo acknowledges that a petition should not be approved where, as here, the Petitioner has not demonstrated that the petition should be granted.

Specifically, the Yates memo states:

. . . Adjudicators are not bound to approve subsequent petitions or applications seeking immigration benefits where eligibility has not been demonstrated, merely because of a prior approval which may have been erroneous. *Matter of Church Scientology International*, 19 I&N 593, 597 (Comm. 1988). Each matter must be decided according to the evidence of record on a case-by-case basis. See 8 C.F.R. § 103.8(d).

....

. . . Material error, changed circumstances, or new material information must be clearly articulated in the resulting request for evidence or decision denying the benefit sought, as appropriate.

See Memorandum from William R. Yates, Associate Director for Operations, *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity*, HQOPRD 72/11.3 (Apr. 23, 2004).

We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Church Scientology*, 19 I&N Dec. at 597; see also *Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). Furthermore, we would not be bound to follow the contradictory decision of a service center. See *La. Philharmonic Orchestra v. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 1999).

We also note, the Director articulated in her decision denying the petition that if the prior decision was approved based on the same evidence that are contained in the current record, the prior approval would constitute material and gross error. Therefore, we find that the Director's decision denying the petition complied with the Yates memo. Similarly, in our decision dismissing the appeal, we also articulated the same concerns of material error.

Moreover, the Yates memo clearly states that each matter must be decided according to the evidence of record. On motion, the Petitioner suggests that USCIS was required to look at the prior record of

proceedings dealing with the separate adjudication of the approved H-1B petition filed on behalf of the Beneficiary and provide a reason why deference is not warranted.

A copy of that petition, however, was not included in the initial record. It must be emphasized that each petition filing is a separate proceeding with a separate record. *Hakimuddin v. DHS*, No. 4:08-cv-1261, 2009 WL 497141, at *6 (S.D. Tex. Feb. 26, 2009). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceedings. 8 C.F.R. § 103.2(b)(16)(ii). If a petitioner wishes to have prior decisions considered by USCIS in its adjudication of a petition, the petitioner is permitted to submit copies of such evidence that it either obtained itself and/or received in response to a Freedom of Information Act request filed in accordance with the applicable regulations. When “any person makes application for a visa or any other document required for entry, or makes application for admission, . . . the burden of proof shall be upon such person to establish that he is eligible” for such benefit. Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg’l Comm’r 1972).

However, even if the Petitioner had submitted copies of the prior petitions, if the prior petitions were approved based on the same description of duties and assertions contained in the current record, they would constitute material and gross error. Again, we are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Church Scientology*, 19 I&N Dec. at 597.

Aside from the Petitioner’s reliance on the Yates memo, this motion focuses on the same allegations of error which were already raised and addressed in prior proceedings. The Petitioner has not established that our prior decision was incorrect at the time of that decision. Therefore, the Petitioner has not shown proper cause for reconsideration.

III. CONCLUSION

The Petitioner has not established that our decision was based on an incorrect application of law or policy.

ORDER: The motion to reconsider is denied.

Cite as *Matter of B-H-E-, Inc.*, ID# 306653 (AAO Mar. 14, 2017)