



Date: NOV 10 1988

CASE NO. 87-INA-562

IN THE MATTER OF

EDELWEISS MANUFACTURING COMPANY, INC.,

Employer

on behalf of

FRANCESCO APPOLLONIA,

Alien

BEFORE: Litt, Chief Judge; Vittone, Deputy Chief Judge; and Brenner, DeGregorio, Guill, Schoenfeld and Tureck, Administrative Law Judges

DECISION AND ORDER
DENYING MOTION FOR RECONSIDERATION

On March 15, 1988, the Board of Alien Labor Certification Appeals (the Board) issued its Decision and Order in the above-captioned matter pursuant to Section 212(a)(14) of the Immigration and Nationality Act, 8 U.S.C. §1182(a)(14), and the applicable regulations issued thereunder at 20 C.F.R. Part 656. The Decision and Order, affirming the Certifying Officer's (C.O.) denial of certification, was based on the record upon which the C.O.'s denial had been based. The denial of certification was affirmed because the record, which was developed by Employer and the C.O., showed that the alien for whom certification was sought is the sole owner of Employer, a corporation in whose name the application for certification had been filed. On the basis of the alien's ownership, the Board determined that the job opportunity was not permanent full-time work by an employee for an employer other than himself in violation of the definition of "employment" found at 20 C.F.R. §656.50.

On July 11, 1988, Employer, represented by new counsel, filed a Motion for Reconsideration alleging that in affirming the denial of certification, the Board had misconstrued the intent of Congress. Employer argued that the view adopted by the Board, that there must be a "bona fide job opportunity" for a U.S. worker in order for a labor certification application to proceed, is not what Congress had intended when it enacted Section 212(a)(14). A review of the legislative history, Employer argued, would show that Congress had intended to base alien labor certification on a "mere test of the labor market" to ensure that the newly-arriving employer-sponsored immigrants would not be "displacing or replacing" American workers. Further, Employer argued that if the Board ruled

on this issue without the benefit of extensive briefing on the underlying statute, the integrity of the administrative appeals process would be undermined.

In order to demonstrate the correctness of its position, Employer moved that the Board reopen this matter and schedule it for briefing and oral argument. To that end, Employer proposed that it be granted a 90-day period in which to submit its brief and that the American Immigration Lawyer's Association (AILA) be granted status to file a brief as amicus curiae.

On July 19, 1988, the Solicitor filed the Certifying Officer's Memorandum in Opposition to the Employer's Motion for Reconsideration. The C.O. urged denial of the Motion for Reconsideration on diverse bases. First, the C.O. argued that Employer's motion is untimely. Citing no authority for the proposition, the C.O. stated that the "normal" time in which such a motion should be filed is within thirty days of the Decision and Order. Therefore, because the motion was filed almost four months after the Board issued its Decision and Order, the C.O. urged that the matter not be reopened.

Additionally, the C.O. argued that reconsideration should be denied because Employer raised issues which were raised and decided when this matter was first briefed before the Board. Again citing no authority, the C.O. stated that the "normal" basis for reconsideration is the identification of a narrow and clear error of law or fact. Employer's Motion for Reconsideration here, argued the C.O., is based on legal arguments which Employer was given ample opportunity to brief and discuss and which, as evidenced by the Decision and Order in this matter, have been decided.

Further, the C.O. contended that the Board cannot adequately address Employer's arguments. This is so, the argument goes, because Employer's position is essentially a challenge to the legality of the regulation which requires that job opportunities be bona fide and clearly open to U.S. workers. Citing no authority for the proposition, the C.O. stated that administrative bodies do not have the authority to overturn regulations.

The C.O. also disagreed with Employer's position regarding the integrity of the administrative appeals process. The C.O. contended that to reopen this matter on the grounds set forth in Employer's motion would cause more disruption to the administrative appeals process than would denial. The process would be subject to constant disruption of its efficient operation if a case could be reopened to reconsider issues already addressed and decided. Further, the time at which a Decision and Order becomes final would never be clear. Lastly, the C.O. argued that under the Administrative Procedure Act (APA), Employer's proper course is to appeal the Decision and Order to the district court seeking a full review of the legal questions at issue.

DISCUSSION

Underlying the parties' arguments regarding whether the Board should reconsider its decision in this matter is a threshold question: to what extent does the Board have the authority to do so. Implicit in the C.O.'s arguments, that the Motion to Reconsider is untimely and that the proper course is to appeal this matter to the district court, is the notion that the Board does not have the authority, at least on the facts presented here, to grant reconsideration. On the other hand, Employer's arguments almost four months after the decision--that the Board has misconstrued Congressional intent and that the integrity of the administrative appeals process will be undermined if the Board's decision is allowed to stand without the benefit of extensive briefing on Congressional intent--assume that the Board has the authority to alter its decision even after the passage of a significant amount of time.

The Board has the authority to reconsider its decisions. This authority was not granted by statute or regulation; it is inherent in the administrative authority granted by Congress. "Administrative agencies have inherent authority to reconsider their own decisions, since the power to decide in the first instance carries with it the power to reconsider." Trujillo v. General Electric Co., 621 F.2d 1084, 1086 (10th Cir.1984) (citing Albertson v. Federal Communications Commission, 182 F.2d 397, 399 (D.C. Cir.1950)).

However, the authority to reconsider imposes no obligation on the Board to exercise that authority. Whether to reconsider in a particular case is left to the Board's discretion. "Case law clearly enunciates the principle that the granting or denying of a petition for reconsideration rests within the sound discretion of the agency and that their denial of such a petition will only be reversed for clear abuse of discretion." National Trailer Convoy, Inc. v. United States, 293 F.Supp. 630, 633 (citations omitted), aff'd, 394 U.S. 849, 89 S.Ct. 1631 (1969). Further, "[s]ummary denial of such a petition is appropriate and 'further findings and conclusions are unnecessary if it is clear that the [agency] gave due consideration to the petition.'" Id. at 633 (citing Colorado-Arizona-California Express, Inc. v. United States, 224 F.Supp. 894 (D.Colo.,1963)).

Summary denial of the Motion for Reconsideration is appropriate in the instant case. Employer points out no flaw in the judicial process by which the Board reached its decision; Employer does not allege that the Board overlooked some important fact. Due consideration of the motion leads to the conclusion that Employer's argument in support of reconsideration, Congressional intent, should have been made, if indeed it was not, when the matter was first presented to the Board.

Finality of decisions is an important consideration in administrative judicial decision-making. Administrative Law Judges, C.O.s, attorneys, employers, and aliens must be able to rely on the Board's decisions in subsequent matters and this consideration increases in importance with the passage of time. Although no rule is herein established regarding what constitutes timeliness for the filing of Motions for Reconsideration before the Board, we find that such motions filed over three months after the issuance of the Decision and Order which do not show good cause for the delay in filing should be denied as untimely. No such good cause is alleged or apparent in this case.

ORDER

Accordingly, Employer's Motion for Reconsideration is hereby DENIED. It is so ORDERED.

JOHN M. VITTON
Deputy Chief Judge

Washington, D.C.

JMV/BDC/pay