U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32418117

Date: AUG. 21, 2024

Motions on Administrative Appeals Office Decision

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

The Petitioner, a former sole proprietor of beauty supply stores, sought to employ the Beneficiary as a wigmaker. He requested the Beneficiary's classification under the employment-based, third-preference (EB-3) immigrant visa category as a "skilled worker." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). Businesses may sponsor noncitizens for permanent residence in this category to work in jobs requiring at least two years of training or experience. *Id.*

After first granting the filing, the Director of the Texas Service Center revoked the petition's approval. We dismissed the Petitioner's appeal, affirming the Director's conclusion that the Petitioner did not demonstrate the Beneficiary's qualifying experience for the offered job or the requested immigrant visa category. *See In Re: 24544158* (AAO Feb. 7, 2023). We reserved consideration of the Director's findings that the Petitioner did not establish his ability to pay the offered job's proffered wage or his continuing intent to employ the Beneficiary in the job. *Id.* We then dismissed combined motions to reopen and reconsider by the Petitioner's son, most recently finding that he lacked standing to submit them. *See In Re: 28407817* (AAO Jan. 17, 2024).

The matter returns to us on the Beneficiary's combined motions to reopen and reconsider. He asserts eligibility to file the motions based on his qualifications to "port" to a new employer or job. *See* section 204(j) of the Act, 8 U.S.C. § 1154(j); *Matter of V-S-G- Inc.*, Adopted Decision 2017-06 (AAO Nov. 11, 2016) (requiring beneficiaries' treatment as "affected parties" in revocation proceedings if they qualify and properly apply to port under section 204(j) of the Act). He submits additional evidence and argues eligibility for the requested benefit.

In these revocation proceedings, the Beneficiary bears the burden of demonstrating eligibility by a preponderance of the evidence. *Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988). Upon review, we conclude that, while he has standing to file the motions, they exceed the scope of our review. We will therefore dismiss them.

I. LAW

A motion to reopen must state new facts supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must establish that our prior decision misapplied law or policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). On motion, we review only our latest decision. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

II. ANALYSIS

A. The Beneficiary's Standing

We will first consider the Beneficiary's eligibility to port – and thus whether we must treat him as an affected party in this matter. The motion to reopen contains proof that, since our prior decision, the Beneficiary filed with the Director a Form I-485 Supplement J, Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA [Immigration and Nationality Act] Section 204(j). The Beneficiary requested to port to the business of the Petitioner's son as a wigmaker. Thus, consistent with *V-S-G-*, the Beneficiary properly requested to port. *See Matter of V-S-G-*, Adopted Decision 2017-06 at *14.

The Beneficiary must also demonstrate that: 1) he filed an application for adjustment of status that remained unadjudicated for at least 180 days; and 2) his new job is in the same or similar occupational classification as the job the Petitioner offered. *See* section 204(j) of the Act. A letter from the Petitioner's son indicates that he has offered the Beneficiary the same job that the Petitioner offered. Thus, a preponderance of the evidence demonstrates that the Beneficiary's new job is in the same occupational classification as the initial offered job.

The record further establishes that the Beneficiary filed an adjustment application that has remained unadjudicated for more 180 days. USCIS records confirm that he filed a Form I-485, Application for Adjustment of Status, in September 2004. USCIS denied the application in December 2007. But it has remained pending since the Agency reopened it in October 2016.

The Beneficiary has demonstrated his eligibility and proper request to port. Thus, under *V-S-G-*, we will treat him as an affected party in these proceedings and accept his combined motions.

B. The Motions' Sufficiency

The motion to reopen contains additional evidence regarding the purported abilities of the Petitioner and his son to continuously pay the proffered wage. The motion to reconsider argues that, not only did the Petitioner and his son have the ability to pay the proffered wage, but that they had the intent to employ the Beneficiary in the offered job and that he has the qualifying experience for the job.

As previously indicated, we review only our latest decision. The scope of a motion is limited to "the prior decision," and the motion's jurisdiction is limited to the official who made "the latest decision in the proceeding." *See* 8 C.F.R. § 103.5(a)(1)(i), (ii). Thus, we consider evidence and arguments only to the extent they pertain to our latest decision.

Our latest decision did not substantively address the Beneficiary's experience, the Petitioner and his son's ability to pay the proffered wage, or their intent to employ the Beneficiary in the offered job. Rather, we dismissed the prior motions solely because the Petitioner's son lacked standing to file them. The Beneficiary's motions do not address the factual or legal correctness of our latest decision, or otherwise address the lack of standing of the Petitioner's son.

Motions are generally disfavored because they indefinitely prolong and delay proceedings. *See INS v. Abudu*, 485 U.S. 94, 107 (1988) ("There is a strong public interest in bringing litigation to a close.") Before his unfortunate death, the Petitioner filed an appeal and had a fair opportunity to contest the petition's revocation. After that, his son filed two motions, and we determined that his son lacked standing.[1] Only now, in the third motion in this case, does the Beneficiary attempt to insert himself into the proceedings. While we recognize his eligibility for treatment as an affected party in revocation proceedings, he must comply with motion requirements. *See* 8 C.F.R. § 103.5(a)(4) (requiring dismissal of a motion "that does not meet applicable requirements").

The Beneficiary's evidence and arguments on motion exceed the scope of our review. We must therefore dismiss the motions.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[1] In our last decision, we noted that:

> The Petitioner's son states that he received his father's business in probate proceedings after his father's death. He says that he continues to operate the business as a sole proprietorship from the same locations and under the same name as his father did. He also states that he offers the same position to the Beneficiary. But, because the Petitioner's business was a sole proprietorship and his son has not demonstrated his father's transfer of its ownership before his death, the business terminated when he died. *See* Ga. Sec'y of State, Ga. Corps. Div., "Which Legal Entity is Right for Your Business?" sos.ga.gov/sites/default/files/2022-01/legal_entity.pdf ("The sole proprietor has total control of the business. The problem with total control is that if the owner dies, the business ceases to exist."); *see also Vernon v. Schuster*, 688 N.E.2d 1172, 1177 (Ill. 1997) (holding that a seller's sole proprietorship ceased to exist upon his death). Thus, the Petitioner's son operates a different business than his father, and he has not established himself as an affected party in these proceedings.