U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-A- [redacted]

DATE: DEC. 4, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, [redacted] sought to employ the Beneficiary as an accountant. It requested classification of the Beneficiary as a professional under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based "EB-3" immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

After initially approving the petition, the Director of the Texas Service Center revoked the approval.[1] The Director found that the Petitioner did not established its continuing ability to pay the proffered wage in accordance with the requirements in 8 C.F.R. § 204.5(g)(2) and also did not demonstrate the *bona fide* nature of the job offer.

The matter is now before us on the Petitioner's appeal. At the time the appeal was filed, however, the Petitioner no longer existed as a legal entity with standing to file an appeal. *See* 8 C.F.R. §103.3(a)(1)(iii)(B). Although normally not the case, under certain circumstances described below a beneficiary may be considered to be an affected party in immigrant petition revocation proceedings. In this case, because the Director did not determine the Beneficiary's eligibility to participate in the revocation proceedings, we will withdraw the Director's decision and remand this matter for further proceedings concerning the Beneficiary's standing.

I. WHETHER THE BENEFICIARY IS AN AFFECTED PARTY

U.S. Citizenship and Immigration Services (USCIS) regulations do not generally allow a beneficiary to appeal a petition's revocation. *See* 8 C.F.R. § 103.3(a)(1)(iii)(B) (stating that a beneficiary is not an "affected party" with legal standing in a proceeding). However, certain "portability-eligible" beneficiaries of revoked I-140 visa petitions are treated as affected parties in revocation proceedings. Section 204(j) of the Act, 8 U.S.C. § 1154(j). *See Matter of V-S-G- Inc.*, Adopted Decision 2017-06 (AAO Nov. 11, 2017). Under the portability provision of section 204(j) of the Act, approved

[1] At any time before a beneficiary obtains lawful permanent residence U.S. Citizenship and Immigration Services may revoke a petition's approval for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. A petition's erroneous approval may in and of itself justify its revocation. *Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988).

petitions may remain valid under certain conditions even after eligible beneficiaries change jobs or employers. A beneficiary of a valid visa petition, whose application for adjustment of status remains pending for at least 180 days, may "port" the petition to a new job if that job is in the same or similar occupational classification as the position offered in the petition. Thus, even though the petitioner for the visa classification and its beneficiary are no longer in an employment relationship, the underlying petition may remain valid for purposes of the beneficiary's adjustment of status application.

In *Matter of V-S-G- Inc.* we held that "[b]eneficiaries of valid employment-based immigrant visa petitions who are eligible to change jobs or employers and who have properly requested to do so [under section 204(j)], are 'affected parties' under DHS regulations for purposes of revocation proceedings. . . ." *Matter of V-S-G- Inc.*, Adopted Decision 2017-06 at *1. In this case it appears that the Beneficiary notified USCIS of his intent to port to a new employer before the Director's revocation decision. In his decision, however, the Director did not determine whether the Beneficiary had properly ported and thus should be treated as an affected party in the revocation proceedings.

On remand, the Director should determine whether the Beneficiary was eligible to and properly requested to port under section 204(j) of the Act. This determination involves considering whether the Beneficiary's adjustment of status application had been pending for at least 180 days at the time of the request to port. *See* 8 C.F.R. § 245.25(a)(2). It also involves considering whether USCIS received sufficient notice of the Beneficiary's new job and whether the job is in "the same or similar occupational classification" as the position offered in the petition. *Id.*; *see also* USCIS Policy Memorandum PM-602-0152, *Guidance on Notice to, and Standing for, AC21 Beneficiaries about I-140 Approvals Being Revoked After Matter of V-S-G- Inc.* (Nov. 11, 2017), http://www.uscis.gov/laws/policy-memoranda.

If the Director finds that the Beneficiary should be deemed an affected party in accordance with USCIS Policy Memorandum PM-602-0152, the Director shall issue a new NOIR to the Beneficiary. Upon receipt of a timely response to a new NOIR, the Director should review the entire record and enter a new decision.

II. CONCLUSION

In accordance with the foregoing analysis, we remand this matter to the Director to determine the Beneficiary's eligibility to participate in revocation proceedings as an affected party.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing decision and for the entry of a new decision. If the new decision is adverse, it shall be certified to us for review.

Cite as *Matter of H-A-*[redacted], ID# 0009263 (AAO Dec. 4, 2019)