U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12964847

Date: DEC. 21, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Other Worker

The Petitioner is a solar company that seeks to employ the Beneficiary as an electrician/foreman. It requests classification of the Beneficiary as a skilled worker under the third preference employment-based immigrant visa category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This immigrant visa category allows a U.S. employer to sponsor a foreign national for lawful permanent resident status to work in a position that requires at least two years of education, training, or experience.

Petitions for skilled workers must be accompanied by a valid labor certification approval from the U.S. Department of Labor (DOL) to establish that there are not sufficient U.S. workers who are able, willing, qualified, and available for the offered position. Section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). A labor certification expires if, within 180 days of its approval, it is not filed in support of a petition. 20 C.F.R. § 656.30(b)(1).

In this case, the Director of the Nebraska Service Center denied the petition because it was accompanied by an expired labor certification.[1] The Director's decision correctly states that the denial may not be appealed to the Administrative Appeals Office (AAO). The AAO's appellate jurisdiction is based on a delegation of authority from the Secretary of Homeland Security. See Delegation Number 0150.1(U) (effective March 1, 2003). The delegation states that U.S. Citizenship and Immigration Services (USCIS) has the "[a]uthority to exercise appellate jurisdiction over the matters described in 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003)" (citation corrected). Under 8 C.F.R. § 103.1(f)(3)(iii)(B) (as in effect on February 28, 2003), we lack appellate jurisdiction "when the denial of the petition is based upon lack of a certification by the Secretary of Labor."

We do not have jurisdiction over this appeal because the petition was denied based on the lack of a valid labor certification. Therefore, we must reject the appeal.

ORDER: The appeal is rejected.

[1] The Director concluded that the Petitioner did not properly file the immigrant visa petition until September 10, 2019. This is after the August 5, 2019 expiration date of the labor certification. Rejected petitions do not retain a filing date. 8 C.F.R. § 103.2(a)(7)(ii).