U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13579797

Date: DEC. 21, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Other Worker

The Petitioner is a furniture business that seeks to employ the Beneficiary as an office coordinator. It requests classification of the Beneficiary as an unskilled worker under the third preference employment-based immigrant visa category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). 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 less than two years of education, training, or experience.

Petitions for unskilled 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] On the Petitioner's subsequent motion to reconsider, the Director affirmed the initial decision denying the petition. However, the Director's decision incorrectly states that the denial may be appealed to the Administrative Appeals Office (AAO).[2] For the reasons explained below, we do not have jurisdiction over an appeal of an immigrant visa petition denial based on the lack of a valid labor certification.

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." As this petition was denied because it was filed without a valid labor

[1] The Petitioner did not properly file the immigrant visa petition until October 1, 2018. This is after the November 1, 2017 expiration date of the labor certification. Rejected petitions do not retain a filing date. 8 C.F.R. § 103.2(a)(7)(ii).
[2] The Director's initial denial notice also incorrectly stated that the decision could be appealed to the AAO.

certification, we do not have jurisdiction over this matter. Therefore, we must reject the Petitioner's appeal.

There is no administrative appeal or motion from the rejection of an appeal.

ORDER: The appeal is rejected.