U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-S-F-, INC.

DATE: DEC. 28, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a nonprofit organization providing services for people with mental, developmental, or physical disabilities, seeks to employ the Beneficiary as a manager. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based "EB-3" immigrant classification 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 training or experience.

The Director of the Nebraska Service Center denied the petition on the ground that it was not supported by a valid labor certification. The Director noted that the labor certification, originally filed with another petition that was initially approved, had been invalidated in a subsequent revocation proceeding based on a finding that it contained a forged signature in the space where the employer was supposed to sign. The Director found that this deficiency was not cured in the instant proceeding by the submission of a photocopy of the labor certification with a new signature in the employer declaration section by the Petitioner's current CEO.

On appeal, the Petitioner disputes the Director's findings. Upon *de novo* review, we will withdraw the Director's decision and remand the case for further consideration and the issuance of a new decision.

I. LAW

A. Employment-Based Immigration Process

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third,

if USCIS approves the petition, the foreign national applies for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. ANALYSIS

Unless unaccompanied by an application for Schedule A designation or documentation of a beneficiary's qualifications for a shortage occupation, a petition for a skilled worker must include a valid, individual labor certification. 8 C.F.R. § 204.5(l)(3)(i). A petition that lacks a required individual labor certification is not considered properly filed. *See* 8 C.F.R. § 204.5(a)(2). At issue in this case, is whether the Form I-140, Immigrant Petition for Alien Worker, was filed with a valid labor certification, as required.

The Petitioner filed the instant petition, its third I-140 petition on behalf of the Beneficiary, in February 2018 with a copy of a previously invalidated labor certification.[1] Under the regulations, if a petition that requires a labor certification upon filing is not supported by a valid labor certification, it is not considered to be properly filed. *See* 8 C.F.R. § 204.5(a)(2). Under USCIS policy, if the Director inadvertently accepts a petition that was filed without the required valid labor certification, the petition will be denied. In this case, the petition was accepted, but then denied because it was not filed with a valid labor certification.

The Secretary of Homeland Security delegated appellate jurisdiction to us over the matters described in former 8 C.F.R. § 103.1(f)(3)(E)(iii). *See* Department of Homeland Security Delegation Number 0150.1, II.U. https://www.hsdl.org/?view&did=234775 (last visited Dec. 10, 2018). That regulation provided us with appellate jurisdiction over employment-based, immigrant petitions filed under 8 C.F.R. § 204.5, except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act. 8 C.F.R. § 103.1(f)(3)(E)(iii)(B) (2003). Because the petition in question was filed with a previously invalidated labor certification, the denial of the petition is based on the lack of a valid labor certification. As such, we do not exercise appellate jurisdiction over this matter. However, because the Director indicated in the decision that appeal rights were available to the Petitioner, we will remand the case for further consideration. If warranted, the Director may treat the appeal as a motion.

III. CONCLUSION

Since we lack jurisdiction to consider the filing before us, we will remand this case to the Director for further consideration of the petition's procedural posture and a decision on the current filing.

[1] The first I-140 petition filed by the Petitioner on the Beneficiary's behalf was initially approved, but the Director initiated revocation proceedings and in November 2017 invalidated the labor and revoked the approval of the petition. The Petitioner did not file a motion or appeal.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of L-S-F-, Inc.*, ID# 2000701 (AAO Dec. 28, 2018)