U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-

DATE: FEB. 6, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a restaurant operator, sought to employ the Beneficiary as a cook. It requested his classification 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" category allows a U.S. business to sponsor a foreign national with at least two years of training or experience for lawful permanent resident status.

After the filing's initial grant, the Director of the Vermont Service Center revoked the petition's approval.[1] The Director concluded that, as of approval, the Petitioner did not establish its required ability to pay the proffered wage. The Director also found that the later termination of the Petitioner's business automatically revoked the petition's approval.[2]

The matter is now before us on appeal by the Beneficiary's current employer. We will reject the appeal as improperly filed.[3]

Only an "affected party" may appeal a U.S. Citizenship and Immigration Services (USCIS) decision. An affected party means "the person or entity with legal standing in a proceeding." 8 C.F.R. § 103.3(a)(1)(iii)(B). In a revocation of an employment-based immigrant visa petition, the affected party is generally the petitioner, the prospective employer that filed the petition.

Here, the Beneficiary's current employer, a separate entity from the petitioning corporation, submits the appeal. The current employer does not assert, nor does the record establish, its status as a

[1] At any time before a beneficiary obtains lawful permanent residence, USCIS may revoke a petition's approval for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. If supported by the record, a petition's erroneous approval may justify its revocation. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

[2] There are no appeal rights for automatic revocations under 8 C.F.R. § 205.1.

[3] The Petitioner did not respond to the Director's notice of intent to revoke. Rather a response was received from counsel, along with Forms G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, from both the Beneficiary and the Beneficiary's new employer. The Director considered the arguments made in response to the NOIR and issued a detailed decision revoking the petition's approval. The Form I-290B, Notice of Appeal or Motion, was signed by counsel and submitted with only a Form G-28 executed by the Beneficiary's new employer.

successor in interest of the Petitioner.[4] The new employer therefore lacks standing in this proceeding.

We note that since this appeal's submission, USCIS has decided to treat certain "portability-eligible" beneficiaries as affected parties in revocation proceedings. *See Matter of V-S-G-, Inc.*, Adopted Decision 2017-06 (AAO Nov. 11, 2017). *Matter of V-S-G-*, however, specifically declines to treat employers to whom beneficiaries port as affected parties. *Id.* at *12. Thus, the Beneficiary's current employer lacks standing in this matter.

We must reject an appeal submitted by an entity that is not entitled to file it. 8 C.F.R. § 103.3(a)(1)(v)(A)(*1*).

ORDER: The appeal is rejected.

Cite as *Matter of B-*, ID# 82739 (AAO Feb. 6, 2018)

[4] *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986) (explaining how an employer may assume immigration sponsorship of a foreign national who initially received a job offer from a different business).