U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-, INC.

DATE: FEB. 8, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a supermarket operator, sought to employ the Beneficiary as a cashiers' supervisor. It requested her classification under the third-preference, immigrant category as a skilled worker. 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 for lawful permanent resident status to work in a job requiring at least two years of training or experience.

After initially granting the filing, the Director of the Nebraska Service Center revoked the petition's approval. We affirmed the revocation on appeal and denied the Petitioner's following motion to reconsider. *See Matter of F-, Inc.*, ID# 01372371 (AAO May 31, 2018). Like the Director, we found that the Petitioner did not demonstrate the Beneficiary's possession of the minimum experience required for the offered position. We also concluded that the record did not establish her qualifications for the requested classification.

The matter is before us again on the Beneficiary's motions to reopen and reconsider. She asserts that we erred in finding insufficient evidence of her qualifications for the offered position and requested classification. She also submits additional evidence, including a Form I-485 Supplement J, Request for Job Portability Under INA Section 204(j), and a letter from another employer who has offered her a job as a cashiers' supervisor.

Upon review, we will deny the motion to reopen and reconsider.

I. LAW

A motion to reconsider is based on an incorrect application of law or policy, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

Beneficiaries generally cannot seek reopening or reconsideration of petitions on their behalf. *See* 8 C.F.R. § 103.3(a)(1)(iii)(B) (excluding a beneficiary from the definition of the term "affected party"). In revocation proceedings, however, U.S. Citizenship and Immigration Services (USCIS) treats beneficiaries as affected parties if they qualify for "portability" and properly request to "port" to new employment. *See Matter of V-S-G- Inc.*, Adopted Decision 2017-06 (AAO Nov. 11, 2017).[1] "A beneficiary's request to port is 'proper' when USCIS has evaluated the request and determined that the beneficiary is indeed eligible to port prior to the issuance of a NOIR [notice of intent to revoke] or NOR [notice of revocation]." USCIS Policy Memorandum PM 602-0152, *Guidance on Notice to, and Standing for, AC 21 Beneficiaries about I-140 Approvals Being Revoked After Matter of V-S-G- Inc.* 5 (Nov. 11, 2017), https://www.uscis.gov/legal-resources/policy-memoranda (last visited Jan. 11, 2019). Thus, a beneficiary becomes an "affected party" with legal standing in a revocation proceeding when USCIS makes a favorable determination that the beneficiary is eligible to port. *Id.*

Here, the Beneficiary asserts that she has standing to file the appeal because she requested to port to new employment with the submission of the Form I-485 Supplement J and letter from the new employer. Contrary to our holding in *V-S-G-*, however, she has not properly requested to port to that employment, because she did not request to port before issuance of an NOIR or NOR in this matter. Rather, her request came after the issuance of our appellate decision and prior motion decision. The request to port was not proper, therefore, because USCIS could not evaluate it and act upon it prior to the issuance of the NOIR or the NOR.

III. CONCLUSION

Since the request to port was not proper, the Beneficiary has not been deemed an affected party in the revocation proceedings and does not have standing to seek reconsideration or reopening of our decision.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied

Cite as *Matter of Matter of F-, Inc.*, ID# 1879047 (AAO Feb. 8, 2019)

[1] Under the portability provision of the American Competitiveness in the Twenty-first Century Act of 2000 (AC21), petitions for beneficiaries whose applications for adjustment of status remained unadjudicated for at least 180 days "shall remain valid" if the beneficiaries receive new job offers in the same or similar occupational classifications as their original, sponsored positions. Section 204(j) of the Act, 8 U.S.C. § 1154(j).