U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28407817

Date: JAN. 17, 2024

Motions on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Skilled Worker)

The Petitioner, a sole proprietor who operated beauty supply stores, sought to employ the Beneficiary as a wigmaker. He requested the Beneficiary's classification under the employment-based, third-preference (EB-3) immigrant visa category as a "skilled worker." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). U.S. businesses may sponsor noncitizens for permanent residence in this category to work in jobs requiring at least two years of training or experience. *Id.*

The Director of the Texas Service Center revoked the petition's initial approval. Finding that the filing was erroneously granted, the Director concluded that the Petitioner did not demonstrate: his required ability to pay the offered job's proffered wage; the Beneficiary's possession of the minimum experience required for the job and the requested immigrant visa category; or the job's availability to U.S. workers. The Director also found that the Petitioner and Beneficiary willfully misrepresented material facts on the accompanying certification from the U.S. Department of Labor.

We dismissed the Petitioner's following appeal, affirming the Director's conclusions regarding the Petitioner's ability to pay the proffered wage and the Beneficiary's possession of the required experience. *See In Re: 00463994* (AAO June 7, 2022). We also withdrew the Director's findings regarding the job's availability to U.S. workers and the alleged misrepresentations on the labor certification. *Id.* Because the Petitioner died after the appeal's filing, we further added a potential denial ground regarding the job offer's continuing validity. *Id.* After our appellate decision, the Petitioner's son filed combined motions to reopen and reconsider the matter. In dismissing his motions, we found that he had not demonstrated the Beneficiary's qualifying experience and reserved consideration of the other issues argued on motion. *See In Re: 24544158* (AAO Feb. 7, 2023).

The matter returns to us on a second round of combined motions by the Petitioner's son. Because he has not demonstrated his standing to file the motions, we must dismiss them.

A motion to reopen or reconsider must be filed by an "affected party." 8 C.F.R. § 103.5(a)(1)(i). The term means "the person or entity with legal standing in a proceeding." 8 C.F.R. § 103.3(a)(1)(iii)(B). In visa petition proceedings, the affected party is generally the petitioner. *Id.* We must dismiss motions that do not meet applicable requirements. 8 C.F.R. § 103.5(a)(4).

On November 2, 2023, we sent the Petitioner's son a notice of intent to dismiss (NOID) his motions, informing him that he did not appear to be an affected party eligible to file them. Rather, the affected party appeared to be his father - the Petitioner and the beauty supply business's sole proprietor. A sole proprietorship is an unincorporated business indistinguishable from its owner. *Matter of United Inv. Grp.*, 19 I&N Dec. 248, 250 (Comm'r 1984). The record shows that the petitioning owner died in 2017.

The Petitioner's son states that he received his father's business in probate proceedings after his father's death. He says that he continues to operate the business as a sole proprietorship from the same locations and under the same name as his father did. He also states that he offers the same position to the Beneficiary. But, because the Petitioner's business was a sole proprietorship and his son has not demonstrated his father's transfer of its ownership before his death, the business terminated when he died. *See* Ga. Sec'y of State, Ga. Corps. Div., "Which Legal Entity is Right for Your Business?" sos.ga.gov/sites/default/files/2022-01/legal_entity.pdf ("The sole proprietor has total control of the business. The problem with total control is that if the owner dies, the business ceases to exist."); *see also Vernon v. Schuster*, 688 N.E.2d 1172, 1177 (Ill. 1997) (holding that a seller's sole proprietorship ceased to exist upon his death). Thus, the Petitioner's son operates a different business than his father, and he has not established himself as an affected party in these proceedings.

In his NOID response, the Petitioner's son contends that we should not dismiss his motions. He asserts that the Beneficiary qualifies to work for his business under the Act's "portability" provision and that we must treat the Beneficiary in these revocation proceedings as an affected party. *See Matter of V-S-G- Inc.*, Adopted Decision 2017-06 (AAO Nov. 11, 2017). If a beneficiary changes jobs or employers, the portability provision requires the petition - under certain conditions - to "remain valid." Section 204(j) of the Act, 8 U.S.C. § 1154(j). The conditions are that the beneficiary has an application for adjustment of status that has remained unadjudicated for at least 180 days and that their new job remains in the same or similar occupational classification as the job offered in the petition. *Id.* If a beneficiary in revocation proceedings qualifies for portability and properly requested to port to a new job, U.S. Citizenship and Immigration Services (USCIS) must treat them as an affected party. *Matter of V-S-G-*, *supra*, at *10.[1]

But the Beneficiary's portability would not help the Petitioner's son. The motions before us came from the Petitioner's son, not the Beneficiary. Thus, the Beneficiary's portability[2] would not make the Petitioner's son an affected party and allow us to accept his filings.

---

[1] The portability provision does not affect USCIS' revocation authority, which permits revocation "at any time" for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155; *see Herrera v. USCIS*, 571 F.3d 881, 889 (9th Cir. 2009).

[2] Also, the Petitioner's son has not demonstrated the Beneficiary's qualifications to port. The record indicates that the Beneficiary would work in the same job offered in the petition. USCIS records also show that he has an adjustment application that has remained unadjudicated for more than 180 days. But, contrary to our case law, the Petitioner's son has not demonstrated that the Beneficiary properly requested to port. *See Matter of V-S-G-*, *supra*, at *10 (stressing that "a beneficiary must be eligible to and *have properly requested to port*") (emphasis added). USCIS requires a beneficiary seeking to port to submit a Form I-485 Supplement J, Request for Portability Under INA Section 204(j), "in accordance with the form's instructions." 8 C.F.R. § 245.25(a). The NOID response of the Petitioner's son includes a Form I-485 Supplement J properly signed by him and the Beneficiary. But, contrary to the form's instructions, the Beneficiary submitted the form to us rather than to the filing address of his Form I-485, Application for Adjustment of Status. *See* USCIS, Form I-485 Supplement J, "Where to file," www.uscis.gov/i-485supj. Neither the Beneficiary nor the Petitioner's

For the forgoing reasons, the Petitioner's son has not established himself as an affected party in these proceedings. As he does not meet the motion requirements at 8 C.F.R. § 103.5(a)(1)(i), we must dismiss his combined motions. *See* 8 C.F.R. § 103.5(a)(4).

Our conclusion regarding the standing of the Petitioner's son resolves these motions. Thus, we decline to reach and hereby reserve his arguments on motion regarding: the Petitioner's ability to pay the proffered wage; the Beneficiary's qualifications for the offered job and requested immigrant visa category; and the Petitioner's intent to employ the Beneficiary in the job. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant did not otherwise qualify for relief).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

son claims, nor do USCIS records indicate, that the Beneficiary filed a Form I-485 Supplement J to the USCIS office where the Beneficiary filed his adjustment application. The Beneficiary therefore did not properly request to port and, thus, under *V-S-G-*, would not qualify for treatment as an affected party in these revocation proceedings.