U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF T-I-

DATE: JAN. 19, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a convenience store/gas station, sought to employ the Beneficiary as a store manager. It requested his classification as a skilled worker under the third preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(ii), 8 U.S.C. § 1153(b)(ii). This category allows an 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.

After first granting the filing, the Director of the Texas Service Center revoked[1] the petition's approval. The Director concluded that, as of the approval, the record did not establish, as required, that the Petitioner had the ability to pay the proffered wage and that the Beneficiary had two years of experience in the job offered or a related occupation, as required by the labor certification. The Director found that the Beneficiary was the owner or part-owner and president of a company listed as a current employer on the labor certification, and concluded that it did not appear that the Petitioner's position was a *bona fide* job offer or that the Beneficiary intended to work for the Petitioner. The Petitioner filed a motion to reopen and a motion to reconsider, which the Director denied.

The matter is now before us on the Beneficiary's appeal. Although normally not the case, under certain circumstances described below, a beneficiary may be considered to be an affected party in immigrant petition revocation proceedings. In this case, because the Director did not determine the Beneficiary's eligibility to participate in the revocation proceedings, we will withdraw the Director's decision and remand this matter for further proceedings consistent with the following decision.

## I. WHETHER THE BENEFICIARY IS AN AFFECTED PARTY

U.S. Citizenship and Immigration Services (USCIS) regulations do not generally allow a beneficiary to appeal a petition's revocation. *See* 8 C.F.R. § 103.3(a)(1)(iii)(B) (stating that a beneficiary is not an "affected party" with legal standing in a proceeding). However, certain "portability-eligible"

[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. A petition's erroneous approval may in and of itself justify its revocation. *Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988).

beneficiaries of revoked I-140 visa petitions are treated as affected parties in revocation proceedings. Section 204(j) of the Act, 8 U.S.C. § 1154(j). *See Matter of V-S-G- Inc.*, Adopted Decision 2017-06 (AAO Nov. 11, 2017). Under the portability provision of section 204(j) of the Act, approved petitions may remain valid under certain conditions even after eligible beneficiaries change jobs or employers. A beneficiary of a valid visa petition, whose application for adjustment of status remains pending for at least 180 days, may "port" the petition to a new job if that job is in the same or similar occupational classification as the position offered in the petition. Thus, even though the petitioner for the visa classification and its beneficiary are no longer in an employment relationship, the underlying petition may remain valid for purposes of the beneficiary's adjustment of status application.

In *Matter of V-S-G- Inc.*, we held that "[b]eneficiaries of valid employment-based immigrant visa petitions who are eligible to change jobs or employers and who have properly requested to do so [under section 204(j)], are 'affected parties' under DHS regulations for purposes of revocation proceedings. . . ." *Matter of V-S-G- Inc.*, Adopted Decision 2017-06 at *1. Here, the Beneficiary asserts his eligibility for portability, but, because the revocation decision predated *Matter of V-S-G-Inc.*, the Director did not determine whether the Beneficiary had properly ported and thus should be treated as an affected party in the revocation proceedings.

We will therefore withdraw the Director's decision and remand this matter. On remand, the Director should determine whether the Beneficiary properly ported under section 204(j) of the Act. This determination involves considering whether the Beneficiary's adjustment of status application had been pending for at least 180 days at the time of the request to port. *See* 8 C.F.R. § 245.25(a)(2). It also involves considering whether USCIS received sufficient notice of the Beneficiary's new job and whether the job is in "the same or similar occupational classification" as the position offered in the petition. *Id.*; *see also* USCIS Policy Memorandum PM-602-0152, *Guidance on Notice to, and Standing for, AC21 Beneficiaries about I-140 Approvals Being Revoked After Matter of V-S-G- Inc.* (Nov. 11, 2017), http://www.uscis.gov/laws/policy-memoranda.

If the Beneficiary is found to have properly ported, the Director will issue a new notice of intent to revoke (NOIR) to the Petitioner and the Beneficiary. If the Beneficiary did not properly port, the Director should issue a new NOIR to the Petitioner only. Upon receipt of a timely response(s) to a new NOIR, the Director should review the entire record and enter a new decision.

## II. CONCLUSION

Based on the foregoing, we remand this matter to the Director to determine the Beneficiary's eligibility to participate in revocation proceedings as an affected party.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision. If the Beneficiary is deemed to be an affected party, and the new decision is adverse, the new decision shall be certified to us for review.

Cite as *Matter of T-I-*, ID# 591784 (AAO Jan. 19, 2018)