U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36553648

Date: JAN. 31, 2025

Motions on Administrative Appeals Office Decision

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

The Petitioner, a provider of financial accounting services, files its sixth round of combined motions to reopen and reconsider the 2018 revocation of its petition's approval by the Director of the Texas Service Center. The company continues to argue that the Director should have excused the untimely filing of its first motion to reopen and did not properly serve the notice of intent to revoke (NOIR) the petition.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we conclude that the company's current motion to reopen does not meet applicable requirements and that its current motion to reconsider does not demonstrate our misapplication of law or U.S. Citizenship and Immigration Services (USCIS) policy. We will therefore dismiss the motions.

I. LAW

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must establish that our latest decision misapplied law or USCIS policy based on the evidence at the time of the decision. 8 C.F.R. § 103.5(a)(3). Regulations limit the scope of our review on motion to our latest decision. *See* 8 C.F.R. § 103.5(a)(1)(i), (ii) (referencing "the prior decision" and "the latest decision in the proceeding"). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

II. MOTION TO REOPEN

Contrary to 8 C.F.R. § 103.5(a)(2), the Petitioner's current motion to reopen lacks new facts and documentary evidence. "A motion that does not meet applicable requirements shall be dismissed." 8 C.F.R. § 103.5(a)(4). We must therefore dismiss the motion to reopen.

III. MOTION TO RECONSIDER

Before considering the Petitioner's latest arguments, we will summarize the relevant facts.

The Petitioner filed the petition in June 2006, seeking to permanently employ the Beneficiary as an accountant. The company requested his classification under the employment-based, third-preference (EB-3) immigrant visa category as a "professional." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). Businesses may sponsor aliens for U.S. permanent residence in this category to work in jobs requiring at least bachelor's degrees. *Id.*

USCIS approved the petition in November 2007. In September 2018, however, the Director mailed the NOIR to the Petitioner at its last address listed in the petition and afforded the company 33 days to respond. *See* section 205 of the Act, 8 U.S.C. § 1155 (allowing USCIS to revoke a petition's approval for "good and sufficient cause" "at any time" before a beneficiary obtains permanent residence). After receiving no NOIR response during the relevant period, the Director mailed her revocation decision to the company in November 2018 at the same address listed on the NOIR. The following month, the U.S. Postal Service returned the decision to USCIS as undeliverable.

In April 2020, the Petitioner submitted its first motion to reopen. The motion stated that the company received neither the NOIR nor the revocation decision. The company stated that it learned of the petition's revocation the prior month in a USCIS notice regarding its nonimmigrant work visa petition for the Beneficiary.

USCIS must generally receive motions within 33 days of mailed decisions. 8 C.F.R. §§ 103.5(a)(1)(i), 103.8(b). The Agency may excuse an untimely motion to reopen "where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner." *Id.* The Director found that the Petitioner's delay in filing the motion to reopen did not merit an excuse and dismissed the motion as untimely. We dismissed the company's appeal and its following five rounds of combined motions.

Our latest decision affirmed the Director's dismissal of the untimely 2020 motion to reopen. On current motion, the Petitioner contends that "USCIS' restrictive interpretation [of the terms "reasonable" and "beyond the control" in 8 C.F.R. § 103.5(a)(1)(i)] is violative of the petitioner's property rights in that [it was] deprived of an approved I-140 [petition] without an effective notice and the required opportunity to respond to the allegations."

The Petitioner cites no legal authority for its claimed "property rights" in its petition. Federal courts have ruled that petitioners have no constitutionally protected property interests in approved Forms I-140, Petitions for Alien Workers. *See, e.g., Musunuru v. Lynch*, 831 F.3d 880, 891 (7th Cir. 2016). To validly claim a due process violation, a claimant must have a liberty or property interest in the outcome of the proceedings. *Galeano-Romero v. Barr*, 968 F.3d 1176, 1185 (10th Cir. 2020) (quotation omitted). Thus, the Petitioner's argument does not persuade us.

Also, as we have explained in prior decisions in this matter, the Director properly served notice of the intended revocation to the Petitioner. USCIS must notify a petitioner of the Agency's intent to revoke and the revocation decision. 8 C.F.R. § 205.2(b), (c). "Routine service consists of mailing the notice

by ordinary mail addressed to the affected party and [their] attorney or representative of record at [their] last known address." 8 C.F.R. § 103.8(a)(1). "Service by mail is complete upon serving." 8 C.F.R. § 103.8(b). The record shows that the Petitioner did not have an attorney or representative. Thus, by mailing the NOIR and the revocation decision to the company at its last known address, USCIS complied with the applicable regulations. The company's address on the NOIR and revocation decision matches the last address the company listed in its petition. Upon mailing the notices to the last known address, USCIS completed the required service. *See Wah Yuet (USA) Inc. v. Ashcroft*, No. CV 04-9145 CAS (SSx), 2006 WL 8430892, *7 (C.D. Cal. Apr. 13, 2006) (affirming the validity of USCIS' service of a NOIR to a petitioner at its last known address rather than at its then-current address).

The Petitioner claims that, even if USCIS complied with its regulations when issuing the NOIR, an additional "constitutional requirement" mandates that the company receive actual notice of the intended revocation. The company describes USCIS' actions in these revocation proceedings as a "gross misapplication of the spirit of the notice regulations and constitutionally protected rights."

As previously indicated, the Petitioner has not established a constitutionally protected interest in the petition's approval. The company therefore cannot make a Fifth Amendment due process claim. *See Galeano-Romero*, 968 F.3d at 1185 ("[T]o make out a claim for a violation of due process, a claimant must have a liberty or property interest in the outcome of the proceedings.") Thus, contrary to the Petitioner's claim, it need not have received additional notice of USCIS' intent to revoke.

The Petitioner also contends that USCIS should have mailed the NOIR and the revocation decision to the Beneficiary. The company cites a decision from the U.S. Court of Appeals for the Second Circuit, *Mantena v. Johnson*, 809 F.3d 721 (2d Cir. 2015).

The beneficiary in *Mantena*, however, qualified for "portability." *See Mantena*, 809 F.3d at 724. Under the Act's portability provision, I-140 petitions for beneficiaries who have filed adjustment applications that have remained unadjudicated for at least 180 days "shall remain valid," if the beneficiaries change jobs or employers and their new jobs are in the same or similar occupational classifications as listed in their petitions. Section 204(j) of the Act; 8 U.S.C. § 1154(j). If beneficiaries in revocation proceedings qualify for portability and properly requested to "port" to new jobs, USCIS treats them as affected parties, including mailing them copies of NOIRs and decisions. *Matter of V-S-G- Inc.*, Adopted Decision 2017-06, *10 (AAO Nov. 11, 2017).

Unlike the beneficiary in *Mantena*, however, the Petitioner has not demonstrated the Beneficiary's qualifications for portability. USCIS records include two Forms I-485 Supplements J, Confirmations of Valid Job Offer or Requests for Job Portability under INA Section 204(j), signed by the Beneficiary: one dated in July 2018; and the other filed in November 2022. *See* 8 C.F.R. § 245.25(a). The 2018 form, dated about two months before the NOIR's issuance, indicates the Beneficiary's continued acceptance of the Petitioner's original job offer. In the 2022 submission, received a few months after we dismissed the company's first round of combined motions, the Beneficiary requested permission to port to a new job. USCIS, however, denied the 2022 portability request. The Agency had already revoked the petition's approval at the time of the request and the Beneficiary therefore had no basis to port. *See Herrera v. U.S. Citizenship & Immigr. Servs.*, 571 F.3d 881, 887 (9th Cir. 2009) ("[I]n order for a petition to 'remain' valid [for portability purposes], it must have been valid from the start").

Thus, the Beneficiary does not qualify for treatment as an affected party, and *Mantena* does not apply to this case.

Finally, the Petitioner contends that our latest decision misinterpreted a U.S. Supreme Court case, *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). The company cites the case to support its argument that USCIS, upon receiving the returned revocation decision as undeliverable, should have searched the Agency's records for the company's new address and remailed the NOIR to it. *Mullane* required notice by ordinary mail "[w]here the names and post office addresses of those affected by a proceeding are at hand." *Mullane*, 339 U.S. at 318. The Petitioner contends that the factors in its case closely resemble those in *Mullane* and states: "USCIS and AAO appear[] to be fully focused on finding excuses to defeat this paramount purpose of protecting the rights of an affected party."

But we need not argue further about *Mullane*. *Mullane* found that, under the due process clause of the Fourteenth Amendment, trust beneficiaries had protected property interests in the settlement of a fund's accounts. *Mullane*, 339 U.S. at 312. Thus, *Mullane* discussed the type of notice that due process required them to receive. As previously indicated, the Petitioner has not demonstrated that it has a constitutionally protected due process interest in its approved petition. Even if it did, federal courts have found that USCIS' revocation procedures satisfy due process requirements. *See, e.g., Karpeeva v. U.S. Dep't of Homeland Sec.*, 432 Fed.App'x 919, 925-26 (11th Cir. 2011). Thus, the company has not demonstrated *Mullane*'s applicability to this case.

IV. CONCLUSION

The motion to reopen does not meet applicable requirements. The motion to reconsider does not demonstrate that our latest decision misapplied law or USCIS policy. We will therefore affirm the appeal's dismissal.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.