U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-H-

DATE: JULY 19, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a retail jewelry and souvenir store, sought to employ the Beneficiary as a sales and marketing manager. It requested classification of the Beneficiary as a professional under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based "EB-3" immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Vermont Service Center initially approved the petition. The Director of the Texas Service Center subsequently revoked[1] the approval on multiple grounds.

On appeal, we withdrew all of the Director's grounds for revocation, but found that the record at the time of approval did not establish that the Beneficiary had the minimum experience required for the proffered position under the terms of the labor certification. Accordingly, we remanded the case for further proceedings, advising the Director that a new notice of intent to revoke (NOIR) should be issued to inform the Petitioner of the insufficiency of the evidence regarding the Beneficiary's qualifying experience, and any other grounds for revocation the Director may deem appropriate.

Instead of issuing a new NOIR, however, the Director issued a notice of intent to deny (NOID). After receiving a response from the Beneficiary,[2] the Director denied the petition on the ground that

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[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).

[2] 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" 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). In that case 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.

the record did not establish that the Beneficiary met the minimum experience requirement of the labor certification as of the petition's priority date.[3]

The Director's actions were procedurally improper. Since the petition was initially approved, there was no legal basis to deny the petition. The proper course of action after our remand was to issue another NOIR, as we instructed, and if the response to the NOIR was deemed insufficient to overcome all grounds for revocation, to issue another decision revoking the petition's approval.

Due to these procedural errors, we will withdraw the Director's decision and remand the case to the Director for further consideration. The Director shall issue a new NOIR, in accordance with the instructions in our previous remand, and a new decision based on the response to the NOIR.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of S-H-,* ID# 4679712 (AAO July 19, 2019)

[3] The priority date of a petition is the date the underlying labor certification is filed with the Department of Labor. *See* 8 C.F.R. § 204.5(d). In this case the priority date is October 22, 2004.