U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-C- LLC

DATE: JULY 26, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an electronic commerce company, seeks to employ the Beneficiary as a senior product manager. It requests his classification as a member of the professions holding an advanced degree under the second-preference, immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based, "EB-2" category allows U.S. businesses to sponsor foreign nationals for lawful permanent resident (LPR) status if they have master's degrees, or bachelor's degrees followed by five years of experience.

After first approving the petition, the Director of the Nebraska Service Center revoked its approval. The Director concluded that the prior use of the accompanying labor certification to obtain LPR status for the Beneficiary invalidated the certification.

On appeal, the Petitioner asserts that case law and regulations do not support the decision.

Upon *de novo* review, we will sustain the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer files a labor certification application with the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). The DOL must certify that the United States lacks able, willing, qualified, and available workers for an offered position, and that employment of a foreign national will not hurt the wages and working conditions of U.S. workers with similar jobs. *Id.* If the DOL certifies a position, the employer must then file an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, a petitioner must demonstrate a beneficiary's satisfaction of the certified job requirements. Finally, if USCIS approves a petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. ANALYSIS

A petition for an advanced degree professional must generally include a valid labor certification. 8 C.F.R. § 204.5(k)(4)(i). In this case, the Petitioner seeks EB-2 re-classification of the Beneficiary using the same labor certification that accompanied a prior approved immigrant petition and formed the basis for the Beneficiary's adjustment of status.[1] The Director's notice of intent to revoke (NOIR) asserted that the approval of the Beneficiary's adjustment of status to fill the offered position extinguished the certified job opportunity. *See* 20 C.F.R. § 656.30(c)(2) (providing that a labor certification remains valid only for the particular job opportunity stated on it). The Director therefore found that the labor certification was not valid for the immigrant petition in this case and revoked the petition's approval.[2]

However, the record indicates that the Petitioner's resubmission of the labor certification did not warrant the petition's denial. Eight days before the approval of the Beneficiary's adjustment application, USCIS received a letter from his attorney of record, withdrawing the filing. *See* 8 C.F.R. § 103.2(b)(6) (allowing an applicant to withdraw an application "at any time" before USCIS issues a decision). The NOIR indicated that USCIS did not recognize the withdrawal because the agency did not "connect" the letter to the Beneficiary's file until after the application's approval.

The record indicates the Director's receipt of the Beneficiary's withdrawal letter before the application's approval. The letter identified the application by its corresponding alien registration and receipt numbers, and clearly stated the applicant's withdrawal of the application. Thus, the record establishes the Beneficiary's withdrawal of his adjustment application before its approval. *See Matter of Cintron*, 16 I&N Dec. 9, 9 (BIA 1976) (barring adjudication of a benefit request after its withdrawal).

III. CONCLUSION

Contrary to the NOIR's assertions, the record as of the notice's issuance did not establish the invalidity of the labor certification and would not have warranted the petition's denial on that ground. We therefore withdraw the revocation decision.

ORDER: The appeal is sustained.

Cite as *Matter of A-C- LLC*, ID# 122929 (AAO July 26, 2017)

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[1] The Beneficiary subsequently voluntarily abandoned his LPR status.

[2] USCIS may revoke a petition's approval "at any time" for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. The agency properly issues a NOIR where the record as of the notice's issuance – if unexplained or unrebutted – would have warranted the petition's denial. *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987).