U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11198674

DATE: JULY 29, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for a Skilled Worker

The Petitioner, a "thoroughbred training racing" business, seeks to employ the Beneficiary as a thoroughbred purchasing agent. It requests skilled worker classification for the Beneficiary under the third preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based "EB-3" immigrant classification 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 initially approving the petition, the Director of the Texas Service Center revoked the petition's approval[1] on multiple grounds. The Director found that the Petitioner and the Beneficiary willfully misrepresented a material fact on the labor certification concerning the Beneficiary's experience, and based on that finding invalidated the labor certification. The Director also determined that the Beneficiary did not meet the minimum experience requirement of the labor certification to qualify for the proffered position, and that the Petitioner did not establish that the proffered position was a *bona fide* job opportunity available to U.S. workers.

The matter is now before us on the Beneficiary's appeal. As stated on the Form I-290B (at Part 7.3.d.): "The purpose of this appeal is to refute the Service's allegation of willful fraud or misrepresentation by the beneficiary and the petitioner of the I-140 in question." The Beneficiary does not contest the Director's determinations with respect to his qualifying experience or the *bona fides* of the job opportunity. While the Beneficiary indicated at Part 2.1.b. of the Form I-290B that a brief and/or additional evidence would be submitted within 30 days, no such materials were submitted within that time frame or at any time up to the date of this decision.

Although normally not the case, under certain circumstances a beneficiary may be considered to be an affected party in immigrant petition revocation proceedings. In this case, however, the Beneficiary has not met the requisite conditions to be considered an affected party. Accordingly, we will reject the appeal as improperly filed.

[1] At any time before a beneficiary obtains lawful permanent residence U.S. Citizenship and Immigration Services 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).

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" 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.

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. *See* 8 C.F.R. § 245.25(a)(2)(i). In order to be deemed an affected party in revocation proceedings, a beneficiary must have submitted to USCIS a proper request to port to another employer. As of January 17, 2017, a request to port must be submitted on a Form I-485 "Supplement J, Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j)." *See* 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, at 2; *see also* 8 C.F.R. § 245.25(a). A beneficiary's request to port is "proper" when USCIS has evaluated the request and determined, prior to the issuance of a notice of intent to revoke (NOIR) or notice of revocation (NOR), that the beneficiary is indeed eligible to port. *See* USCIS Policy Memorandum PM-602-0152, *supra*, at 5. Thus, a beneficiary becomes an "affected party" with legal standing in a revocation proceeding when USCIS makes a favorable determination that the beneficiary is eligible to port. *Id.*

In this case, the Beneficiary submitted a Form I-485 Supplement J to USCIS in May 2018, approximately one year after the filing of his adjustment of status application, but it did not request to port to a new job. Rather, the Beneficiary checked the box at Part 1.1.a. confirming that he intended to accept the job offered by the Petitioner when the I-485 application is approved. Since the Beneficiary has not requested to port to a different job, he may not be deemed an affected party in the revocation proceedings and does not have standing to appeal the Director's revocation decision.

II. CONCLUSION

We will reject the appeal because the Beneficiary is not an affected party in the revocation proceedings and therefore does not have standing to file the appeal.

ORDER: The appeal is rejected.