U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22240662

Date: JUN. 13, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Professional

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

Employment-based immigration generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position. *Id*. Labor certification also indicates that the employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id*.

If DOL approves a position, an employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154, 8 C.F.R. § 204.5(a)(2) and (l)(3). Among other things, USCIS considers whether a beneficiary meets the requirements of a certified position and a requested immigrant visa classification. If USCIS approves the petition, a foreign national may finally 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.

Following approval, if USCIS finds good and sufficient cause to revoke, it may do so at any time. *See* section 205 of the Act, 8 U.S.C. § 1155; 8 C.F.R. part 205. Upon the occurrence of certain events, revocations happen automatically. *See* 8 C.F.R. § 205.1(a)(3)(iii). If the revocation will be based on any ground other than those specified in 8 C.F.R. § 205.1 (provisions governing conditions that trigger automatic revocation of approval), then USCIS must issue a notice of intent to revoke and provide the opportunity to submit evidence in opposition thereto, before proceeding with a written notice of revocation. *See* 8 C.F.R. § 205.2(b) and (c).

In these proceedings, it is the Petitioner's, or in this case the Beneficiary's burden, as the appellant, to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The AAO reviews

the questions in this matter de novo. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

The matter before us has a lengthy procedural history, which is incorporated into the decision. The petition was initially approved and its approval was later revoked. Following the Beneficiary's untimely appeal the matter was returned to the Nebraska Service Center to be treated as a motion.[1] In the June 2020 motion decision, the Director of the Nebraska Service Center upheld the revocation. The Beneficiary again filed an appeal. On appeal, in September 2021, we withdrew the Director's June 2020 decision and remanded the matter for further consideration. On remand, in December 2021, the Director again revoked the petition's approval. The matter is again before us on the Beneficiary's appeal.

Subsequent to the initial filing, the original Petitioner's corporate entity status was dissolved.[2]

On appeal, based on the specific facts before us in this matter and based on a review of the entire record, we conclude that the petition was subject to automatic revocation. Accordingly, as the petition's approval remains automatically revoked, the appeal is effectively moot.

ORDER: The appeal is dismissed as moot.

[1] 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). 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. Here, the record demonstrates that the Appellant was employed with the Petitioner starting in July 2002. He filed an adjustment application on July 2, 2007. In 2009, more than 180 days after filing that adjustment application, he notified USCIS that he sought to port to a new employer, and he later notified USCIS that he sought to port to a second new employer on July 1, 2012. Thus, the Appellant is an affected party in this case.

[2] *See* Mich. Dep't of Licensing & Regulatory Affairs, https://cofs.lara.state.mi.us/CorpWeb/CorpSearch/CorpSummary.aspx [redacted] (accessed Jun. 5, 2024).