U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-S-, INC.

DATE: MAR. 31, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an IT consulting services company, seeks to employ the beneficiary as a software engineer. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Petitioner filed a Form I-140, Immigrant Petition for Alien Worker, accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), that was certified by the Department of Labor (DOL). The Director of the Texas Service Center initially approved the petition, but subsequently revoked the petition's approval on the ground that the Petitioner willfully misrepresented a material fact in the labor certification proceeding before the DOL. Specifically, the Petitioner answered "No" to the question at section C.9 of the labor certification ("Is the employer a closely held corporation, partnership or sole proprietorship in which the alien has an ownership interest, or is there a familial relationship between the owners, stockholders, partners, corporate officers, incorporators and the alien?") despite the fact that the Petitioner's president is the Beneficiary's sister.

The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal as moot.

Subsequent to the Petitioner's appeal we referred the labor certification to the DOL with the request that it review the Petitioner's answer to the question at C.9 and advise us whether the DOL had concerns about the validity of the labor certification and/or would revoke the labor certification.

Following the AAO's referral, and pursuant to its authority under 20 C.F.R. § 656.32, the DOL issued a revocation notice to the Petitioner which stated that it was revoking the labor certification on the ground that the Petitioner willfully misrepresented a material fact in its answer to the question at C.9 of the labor certification.

We then sent the Petitioner a notice of intent to dismiss (NOID) the appeal on the ground that the petition was no longer supported by a valid labor certification, as required by 8 C.F.R. § 204.5(a)(2). As we advised in the NOID, if the Form I-140 petition is no longer supported by a certified ETA

Form 9089, the petition cannot be approved and the issues raised on appeal to this office become moot.

The Petitioner filed a timely response to the NOID, stating that it had filed a request for review of the DOL's revocation determination with the Board of Alien Labor Certification Appeals (BALCA), in accordance with 20 C.F.R. § 656.26. A copy of the request for review, dated 2014, was submitted with the response. As far as the record shows, the Petitioner's request for review is still pending at BALCA.

Thus, the labor certification accompanying the Form I-140 petition was revoked by the DOL on 2014, and remains revoked to this day. The petition must be accompanied by an individual labor certification approved by the Department of Labor. *See* 8 C.F.R. § 204.5(a)(2). Because the certification of this labor certification has been revoked, the petition is not supported by a valid labor certification. Therefore, the issues raised in this appeal are moot, and we will dismiss the appeal accordingly.[1]

ORDER: The appeal is dismissed as moot.

Cite as *Matter of B-S-, Inc.*, ID# 90659 (AAO Mar. 31, 2017)

[1] Should BALCA issue a decision in the future that rescinds its revocation notice and re-certifies the labor certification, the Petitioner may file a motion to reopen this proceeding.