U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-M-C-

DATE: SEPT. 20, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a restaurant, sought to employ the Beneficiary as a restaurant manager. It requested classification of the Beneficiary as a skilled worker under the third preference immigrant category. 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 a U.S. 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.

The Director of the Nebraska Service Center initially approved the petition, but subsequently revoked the approval. The Director found that the Petitioner had dissolved, which automatically revoked the prior approval of the petition as of the date of approval. The Petitioner filed a motion to reopen and reconsider, which the Director rejected on the ground that it was untimely filed. The Beneficiary then filed an appeal, which we rejected on the ground that there are no appeal rights for automatic revocations under 8 C.F.R. § 205.1.[1] The matter is now before us on motion to reopen and motion to reconsider filed by the Petitioner. Upon review, we will deny the motions.

I. LAW AND ANALYSIS

The motion to reopen and reconsider[2] in this case is based on our previous rejection of the Beneficiary's appeal for lack of jurisdiction. However, the Petitioner did not cite to any regulation that allows for a motion to be filed on a rejected appeal. When we reject an appeal, there is no merits-based decision for us to review and therefore no basis for a motion. As such, the motions must be denied as improperly filed.

Even if we were to accept the motions, the motions could not be granted as they do not establish that the appeal was rejected in error. In this case, the record shows that the Petitioner's business was dissolved on December 23, 2014. At that time, the regulations at 8 C.F.R. § 205.1 (2014) described

[1] We also noted that the Beneficiary had not been deemed an affected party with standing to file the appeal.

[2] A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must demonstrate that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

the various circumstances in which previously approved immigrant petitions would be automatically revoked. Pertinent to this case, the regulation at 8 C.F.R. § 205.1(a)(3)(iii)(D) (2014) provided that a petition's approval was automatically revoked upon termination of the employer's business in an employment-based preference case filed under section 203(b)(3) of the Act.

Therefore, the Director found that because the Petitioner's business terminated in 2014, a fact that is not in dispute, the prior approval of the Form I-140 petition was automatically revoked, with retroactive effect to the date of its original approval in 2012. As noted in the Director's decision and in our appeal decision, we do not exercise appellate jurisdiction over automatic revocations under 8 C.F.R. § 205.1.[3] *Cf. Matter of Zaidan*, 19 I&N Dec. 297 (BIA 1985) (concluding that there is no provision for appellate review with the Board of Immigration Appeals when a petition's approval is automatically revoked pursuant to 8 C.F.R. § 205.1).

As such, our previous decision to reject the Beneficiary's appeal was correct. Since there was no right to appeal the automatic revocation, there is likewise no right to file a motion contesting that decision. We also note that the current motion to reopen and reconsider was filed in the name of the dissolved Petitioner and signed by its former president. As the Petitioner no longer exists as a functioning business, it is not clear that the current motion was filed by a valid legal entity.

II. CONCLUSION

The regulations do not allow for motions to be filed on a rejected appeal. Thus, the motions before us were improperly filed and must be denied.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of C-H-C-*, ID# 1512094 (AAO Sept. 20, 2019)

[3] By contrast, the right to appeal is specifically prescribed for revocations on other grounds as described in 8 C.F.R. § 205.2 (Revocation on notice).