U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11827706

Date: OCT. 5, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Multinational Managers or Executives

The Petitioner, a teeth-whitening service, seeks to permanently employ the Beneficiary as a manager under the first preference immigrant classification for multinational managers or executives. Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish, as required, that: (1) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer; (2) the Beneficiary has been employed abroad in a managerial or executive capacity; (3) the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity; (4) the Petitioner has the ability to pay the Beneficiary's proffered wage; and (5) the Petitioner has been doing business for at least one year prior to the petition's filing date.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

An immigrant visa is available to a beneficiary who, in the three years preceding the filing of the petition, has been employed outside the United States for at least one year in a managerial or executive capacity, and seeks to enter the United States in order to continue to render managerial or executive services to the same employer or to its subsidiary or affiliate. Section 203(b)(1)(C) of the Act.

The Form I-140, Immigrant Petition for Alien Worker, must include a statement from an authorized official of the petitioning United States employer which demonstrates that the beneficiary has been employed abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition, that the beneficiary is coming to work in the United States for the same employer or a subsidiary or affiliate of the foreign employer, and that the prospective U.S. employer has been doing business for at least one year. *See* 8 C.F.R. § 204.5(j)(3).

II. ANALYSIS

In June 2017, the present Petitioner filed a Form I-140 petition on the Beneficiary's behalf, with the annotation that the 2017 petition seeks to amend a prior 2012 petition filed by another employer.[1] The Director denied the 2017 petition in April 2020, citing multiple disqualifying deficiencies.

The Petitioner's appellate brief consists entirely of arguments relating to the revocation of the approval of the unrelated 2012 petition, and the denial of the Beneficiary's adjustment application. We will address those arguments further below, after discussing the merits of the petition before us on appeal.

The Petitioner does not address or contest any of the Director's substantive conclusions regarding the merits of its own petition. We conclude, therefore, that the Petitioner has waived and abandoned those issues.[2] In the interest of clarity, we will briefly explain why the present petition cannot be approved on its merits, by addressing two of the five stated grounds for denial. Either of those grounds, by itself, suffices to warrant denial of the petition.

The Director denied the petition based, in part, on a finding that the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's foreign employer, by showing that the Beneficiary's foreign employer and the proposed U.S. employer are the same entity or related as a "parent and subsidiary" or as "affiliates." *See generally* section 203(b)(1)(C) of the Act; 8 C.F.R. § 204.5(j)(3)(i)(C).

The Beneficiary's last claimed employment abroad was with [redacted] from 2008 until the Beneficiary entered the United States in March 2010. The Petitioner does not establish, or claim, any shared ownership or qualifying relationship between itself and [redacted] The Petitioner does not establish that it operates outside the United States, or identify any foreign employer with which it has a qualifying relationship. The undisputed lack of qualifying business operations abroad is grounds for denial of the petition; a U.S. employer must conduct business in both the United States and at least one other country in order to qualify as "multinational" for the purposes of the classification sought. *See* 8 C.F.R. § 204.5(j)(2).

Likewise, the Beneficiary must have been employed abroad by a qualifying employer for at least one year during the three years preceding his entry into the United States. 8 C.F.R. § 204.5(j)(3)(B). As discussed above, the Petitioner has not established that [redacted] is a qualifying employer for the purposes of the present petition. Furthermore, the Beneficiary entered the United States in March 2010, and the petitioning entity did not exist until August 2013. This gap of more than three years is inherently disqualifying, even if qualifying employment abroad had preceded it. *See Matter of S-P-, Inc.*,

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[1] As we will discuss in more detail further below, another employer filed a Form I-140 immigrant petition on the Beneficiary's behalf in 2012, seeking to classify the Beneficiary as a multinational manager or executive. The Director approved that petition in 2013, and revoked the approval in 2016.

[2] *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he did not raise them on appeal to the AAO).

Adopted Decision 2018-01 4 (AAO Mar. 19, 2018). The Beneficiary cannot qualify under the classification sought until he accrues at least another year of qualifying employment abroad.

Because the Petitioner and the Beneficiary do not meet basic eligibility requirements, the instant 2017 petition before us on appeal cannot be approved. Therefore, we will dismiss the appeal.

As noted above, the Petitioner does not dispute the grounds for denial of its petition. Instead, the Petitioner seeks to use its appeal, and the underlying petition, as a vehicle for the Beneficiary to pursue benefits under a prior petition filed in 2012, the approval of which was revoked in 2016.

III. PRIOR FILINGS AND ADDITIONAL ARGUMENTS

[redacted], filed a Form I-140 immigrant petition on the Beneficiary's behalf in 2012, seeking to classify the Beneficiary as a multinational manager or executive through an offer of employment with [redacted]. That petition was approved in 2013, and the Beneficiary filed Form I-485, Application to Register Permanent Residence or Adjust Status. In November 2013, shortly after the Beneficiary filed his Form I-485 adjustment application, the present Petitioner notified U.S. Citizenship and Immigration Services (USCIS) in a letter that it was "now sponsoring" the Beneficiary, and that the Beneficiary would avail himself of the portability provisions of section 204(j) of the Act, 8 U.S.C. § 1154(j), which allow the beneficiaries of some employment-based immigrant petitions to change employers under certain circumstances.

The Director revoked the approval of [redacted] 2012 petition in December 2016, citing several grounds, with a finding of willful misrepresentation of a material fact. The revocation led to the denial of the Beneficiary's adjustment application, also in December 2016. In June 2017, the Beneficiary filed a motion to reopen his adjustment application. In conjunction with that motion, the present Petitioner asserted that it did not receive either the notice of intent to revoke (NOIR) or the notice of revocation (NOR) related to [redacted] separate 2012 petition.[3] In denying the motion, the Director stated that the new employer is not an affected party with standing to appeal or otherwise contest the revocation of the approval of [redacted] 2012 petition.[4]

The Petitioner asserts that its 2017 petition sought to "amend" [redacted] 2012 petition, the approval of which had already been revoked in 2016. The portability provisions of section 204(j) of the Act relate to the adjustment application. A beneficiary's request to port to new employment does not require or allow a new employer to formally file a new I-140 petition to "amend" a previously filed I-140.[5] The Petitioner cited no provision to permit a new employer to amend a different employer's petition after its revocation.

[3] Those notices were sent to [redacted] address of record, and returned as undeliverable. The present Petitioner stipulates that [redacted] no longer exists.

[4] *Matter of V-S-G- Inc.*, Adopted Decision 2017-06 (AAO Nov. 11, 2017), grants standing to the beneficiary of an employment-based immigrant petition under certain circumstances. That policy guidance was not yet in effect at the time of the December 2016 revocation and the Beneficiary's June 2017 motion to reopen. Subsequent employers of beneficiaries who have ported or sought to port, are not affected parties under Department of Homeland Security regulations and may not participate in visa revocation proceedings. USCIS Policy Memorandum PM-602-0149, *Matter of V-S-G- Inc., Adopted Decision 2017-06 (AAO Nov. 11, 2017)* 1 (Nov. 11, 2017), https://www.uscis.gov/legal-resources/policy-memoranda.

[5] The Petitioner does not claim or demonstrate that it is [redacted] successor-in-interest, which might have established standing to amend [redacted] 2012 petition under some circumstances.

Generally, a beneficiary may not port to new employment based on a petition that has been revoked for cause. As discussed in binding precedent, the qualifying immigrant visa petition "must have been filed for an alien who is 'entitled' to the requested classification and that petition must have been 'approved' by a USCIS officer pursuant to his or her authority under the Act." *Matter of Al Wazzan*, 25 I&N Dec. 359, 367 (AAO 2010); *see also Herrera v. USCIS*, 571 F.3d 881 (9th Cir. 2009). An approval is revoked for "good and sufficient cause" under section 205 of the Act when "the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant . . . denial." *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). While the current regulations provide limited exceptions for revocations based on withdrawal or the termination of an employer's business, both exceptions specifically exclude revocations based on other grounds. *See* 8 C.F.R. § 205.1 ("If a petitioning employer's business terminates 180 days or more after petition approval, or 180 days or more after an associated adjustment of status application has been filed, the petition remains approved *unless its approval is revoked on other grounds*." (emphasis added)) (effective Jan. 17, 2017).

The Petitioner asserts, on appeal, that the Beneficiary became an affected party for the 2012 petition once he stated his intention to port to a new employer. The appeal before us, however, concerns the separately filed 2017 Form I-140 petition, not the 2012 Form I-140 petition, or the 2013 Form I-485 adjustment of status application. Neither the appeal nor the underlying 2017 Form I-140 petition represents a valid opportunity for the Petitioner (or the Beneficiary) to contest the revocation of an earlier Form I-140 petition filed by a different employer.[6]

The present petition must stand on its own merits, and the Petitioner and the Beneficiary must each meet all applicable eligibility requirements at the time of its filing in 2017. The 2017 petition and its appeal cannot be considered as an extension of [redacted] 2012 petition.

IV. CONCLUSION

The Petitioner has not shown, or attempted to show, that the 2017 petition is approvable on its own merits. The Petitioner filed the petition, and the subsequent appeal, solely to contest the disposition of another employer's petition filed years earlier, which is not before us and regarding which the Petitioner lacks standing.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

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[6] To the limited extent to which the Beneficiary may be an affected party to the 2012 petition, such standing would only allow the Beneficiary an opportunity to challenge the original revocation in that proceeding through a timely appeal or a motion to reopen or reconsider, or response to other notice where standing has been properly determined. 8 C.F.R. §§ 103.3(a)(1)(iii)(B), 103.5(a)(1). Nor would the present Petitioner retain the priority date of the 2012 petition based on its revocation with a finding of material misrepresentation. *See* 8 C.F.R. § 204.5(e)(2). We note, nevertheless, that the Petitioner cites 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/legal-resources/policy-memoranda, which states that NOIRs and NORs should be issued to porting beneficiaries. This guidance, however, did not take effect until November 11, 2017, after the 2016 revocation in this matter. *Id.* at 5.