



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 20474470

Date: JULY 21, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Professional

The Petitioner, a software developer, sought to employ the Beneficiary as a systems analyst. It filed Form I-140 seeking to classify the Beneficiary as a professional under the third preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(B)(3)(A)(ii). This employment-based “EB-3” immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Texas Service Center approved the petition, but later revoked that approval on notice, under the provisions of section 205 of the Act, 8 U.S.C. § 1155, and 8 C.F.R. § 205.2. The Director concluded that the petition had been approved in error. The Director determined that the Petitioner did not make a bona fide job offer, and that the Beneficiary does not meet the requirements for the offered position specified in the labor certification.

The matter is now before us on the Beneficiary’s appeal. Although normally not the case, under certain circumstances described below a beneficiary may be considered to be an affected party in immigrant petition revocation proceedings. In this case, because the Director did not determine the Beneficiary’s eligibility to participate in the revocation proceedings, we will withdraw the Director’s decision and remand this matter for further proceedings concerning the Beneficiary’s standing.

ANALYSIS

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). 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 a similar occupational classification as the position offered in the petition. *See* 8 C.F.R. § 245.25(a)(2)(i). Thus, even though the petitioner for the visa classification and its beneficiary are no longer in an employment relationship,

the underlying petition may remain valid for purposes of the beneficiary's adjustment of status application.

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. Beginning January 17, 2017, a request to port must be submitted on a Form I-485 Supplement J.¹ *See 7 USCIS Policy Manual E.5(B)(1) and 6 USCIS Policy Manual E.10(C)*, <https://www.uscis.gov/policymanual>; *see also* 8 C.F.R. § 245.25(a). A beneficiary's porting request is proper when it has been favorably reviewed by USCIS before the issuance of a notice of intent to revoke (NOIR) or notice of revocation (NOR). *See 6 USCIS Policy Manual, supra*, at E.10(C). 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 immigrant visa petition (Form I-140) was initially approved on December 8, 2007. The Beneficiary filed Form I-485, Application to Register Permanent Residence or Adjust Status, October 12, 2007. The adjustment application remains open and pending. The Director issued a NOIR July 23, 2020, addressing the notice to the petitioning employer. The Petitioner did not respond to the NOIR. Instead, the Beneficiary responded to the NOIR on October 22, 2020. His response included I-485 Supplement J. There is no indication that the Director has yet taken any action, favorable or otherwise, on the portability request.

The Director revoked the approval of the petition on September 17, 2021. The Director concluded that the Beneficiary's comments during his adjustment interview establish that the job was not available to U.S. workers. The Director also concluded that the Beneficiary provided inconsistent information regarding his education, which called into question his eligibility for the position.

The Director addressed the NOR to the petitioning employer. The Beneficiary filed a timely appeal of the revocation on October 5, 2021.

The record shows that the Beneficiary submitted a request to port before the Director issued the NOR, and that his Form I-485 adjustment application had been pending well over 180 days before any of the porting requests were submitted. The Director made no determination whether the Beneficiary should be treated as an affected party in the revocation proceedings based on whether the Beneficiary was eligible to port, and whether he had properly requested to port.

Therefore, we will remand this case for the Director to determine whether the Beneficiary was eligible to port and properly requested to port under section 204(j) of the Act. If the Director concludes that the Beneficiary should be deemed an affected party in accordance with USCIS Policy Memorandum PM-602-0152, the Director shall issue a new NOIR to the Petitioner and the Beneficiary in accordance with the policy memorandum.

Upon receipt of a timely response to a new NOIR, or the expiration of the response period, the Director shall review the entire record and enter a new decision.

¹ The official title is Form I-485 Supplement J, Confirmation of *Bona Fide* Job Offer or Request for Job Portability Under INA Section 204(j).

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing decision and for the entry of a new decision. If the new decision is adverse, it shall be certified to us for review.