U.S. Citizenship and Immigration Services

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

MATTER OF A- CORP.

DATE: JAN. 29, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a provider of information technology solutions, sought to employ the Beneficiary as a senior programmer analyst. It requested his classification as a member of the professions holding an advanced degree under the second preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based "EB-2" immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent residence.

The petition was initially approved. The Director of the Nebraska Service Center subsequently revoked the approval. On appeal we withdrew the Director's decision and remanded the case for further consideration. After issuing a new notice of intent to revoke and receiving the Petitioner's response, the Director issued a new decision which again revoked the approval of the petition. On the Petitioner's appeal we affirmed the petition's revocation based on our finding that the Petitioner had not resolved the evidentiary discrepancies regarding the Beneficiary's work experience and therefore had not established that the Beneficiary met the experience requirement of the labor certification. The Beneficiary then filed motions to reopen and reconsider, which we denied on the ground that the Beneficiary did not establish his standing to file the motions.

The case is now before us on a motion to reconsider, once again filed by the Beneficiary. The Beneficiary asserts that he has standing to bring the motion because it is an "affected party" in the immigrant petition. The Beneficiary also asserts that it has standing under federal case law, and that we should consider the equities of the Beneficiary's situation.

Upon review, we will deny the motion to reconsider.

## I. MOTION REQUIREMENTS

A motion to reconsider must establish 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). A motion to reconsider must be supported by a pertinent precedent or adopted decision, a statutory or regulatory provision, or a statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security (DHS) policy.

We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

## II. ANALYSIS

Under DHS regulations a motion may only be filed by an affected party. *See* 8 C.F.R. § 103.5(a)(1)(i). The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) states that "*affected party* . . . . means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a petition." In *Matter of V-S-G- Inc.*, however, we held that "[b]eneficiaries of valid employment-based immigrant visa petitions who are eligible to change jobs or employers and who have properly requested to do so [under section 204(j) of the Act], are 'affected parties' under DHS regulations for purposes of revocation proceedings . . . ." *Matter of V-S-G- Inc.*, Adopted Decision 2017-06 at 1 (AAO Nov. 11, 2017).

In this case the Beneficiary does not assert that he ever requested to change jobs to another employer, but claims nonetheless that he qualifies as an "affected party" under the "reasoning" in *Matter of V-S-G- Inc.* The Beneficiary is mistaken. Since he did not satisfy the basic condition of communicating to USCIS a request to change jobs to another employer prior to the revocation of the petition's approval, *Matter of V-S-G- Inc.* has no applicability to the Beneficiary and provides no legal basis for his claim to be an "affected party" in these proceedings. In its policy memorandum providing guidance on the implementation of the *V-S-G-* decision, USCIS confirmed that a beneficiary must notify USCIS of its request to port prior to revocation in order to be considered an "affected party" in revocation proceedings. *See* Policy Memorandum, *Guidance on Notice to, and Standing for, AC21 Beneficiaries about I-140 Approvals Being Revoked After Matter of V-S-G- Inc.*, PM-602-0152 (Nov. 11, 2017).

The Beneficiary also asserts more broadly that these proceedings are under the jurisdiction of the Ninth Circuit, since the Petitioner and the job opportunity are located in California, and that the Ninth Circuit has long held beneficiaries to have standing in litigation involving visa petition denials. In support of this claim the Beneficiary cites an appeals court decision in a case involving a family-based immigrant petition, *Abboud v. INS*, 140 F.3d 843 (9th Cir. 1998), and a district court decision in a case involving the denial of an adjustment of status application stemming from the revocation of an approved employment-based immigrant petition, *Ilyabaev v. Kane*, 847 F.Supp. 2d 1168 (D. Ariz. 2012).

While the AAO is bound by the published decisions from the federal circuit court of appeals from the circuit in which the action arose, *see N.L.R.B. v. Ashkenazy Property Management Corporation*, 817 F.2d 74, 75 (9th Cir. 1987), we are not bound by federal district court decisions, *see Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Therefore, *Ilyabaev v. Kane*, a district court decision, is not binding on us in our adjudication of the instant petition. Nor does *Abboud v. INS*, though a circuit court decision, have any binding effect in our proceeding because the court in that case did not rule that the beneficiary of a relative petition had standing to file an administrative appeal, but rather that the beneficiary had standing to raise a judicial challenge to the petition's denial by the INS. The

requirements for a judicial challenge differ from the requirements to file an administrative appeal. The current motion filed by the Beneficiary is not a judicial challenge to an administrative decision by USCIS, and thus is not covered by *Abboud v. INS.*

The Beneficiary further asserts that we should "consider the equities of the matter" including the time frame that has elapsed since the petition was originally approved, the length of time the Beneficiary has lived and worked in the United States, and his family situation. We have no authority to apply the judicially devised doctrine of equitable estoppel to preclude a USCIS component from undertaking a lawful course of action that it is empowered to pursue by statute and regulation. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338-39 (BIA 1991). Estoppel is an equitable form of relief that is available only through the courts. There is no delegation of authority, statute, regulation, or other law that permits us to apply this doctrine to the cases before us. *Id.*

## III. CONCLUSION

In accord with the foregoing discussion, the Beneficiary has not established that he is an affected party with legal standing to file a motion. Further, the Beneficiary has not shown that our previous decision to deny the motions to reopen and reconsider lack of standing was based on an incorrect application of law or of USCIS or DHS policy. Therefore, we will deny the motion to reconsider that decision.

**ORDER**: The motion to reconsider is denied.

Cite as *Matter of A- Corp.*, ID# 2381002 (AAO Jan. 29, 2019)