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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



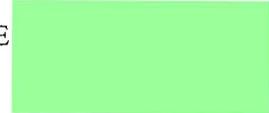
U.S. Citizenship  
and Immigration  
Services



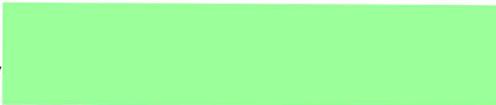
DATE: **MAY 23 2014**

OFFICE: NEBRASKA SERVICE CENTER

FILE



IN RE:           Petitioner:  
                    Beneficiary



PETITION:      Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act , 8 U.S.C. § 11523(b)(3)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, revoked the approval of the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen and a motion to reconsider. The motions will be dismissed pursuant to the regulation at 8 C.F.R. § 103.5(a)(4).

The petitioner describes itself as a business providing care for the elderly. It previously sought to permanently employ the beneficiary in the United States as an Administrative Assistant. The petitioner requested classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).

The director's June 11, 2009 decision revoked the approval of the petition based on the petitioner's withdrawal of the petition on March 23, 2009. On appeal, the AAO withdrew the director's decision, finding that the petition's approval had been automatically revoked pursuant to the regulation at 8 C.F.R. § 205.1(a)(iii)(C) as of its March 23, 2009 receipt by United States Citizenship and Immigration Services (USCIS).

The record of proceeding contains a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, for the beneficiary's representative, who also signed the Form I-290B, Notice of Appeal or Motion, which was received on September 9, 2013, more than 150 days after the AAO issued its decision. On motion, the beneficiary's counsel explains that "the parties" never received the decision of the AAO dated April 8, 2013.<sup>1</sup>

The regulation at 8 C.F.R. § 103.5(a)(1) allows for the filing of motions to reopen and motions to reconsider by the "affected party" in an immigration proceeding, which is defined at 8 C.F.R. 103.3(a)(1)(iii)(B), as follows:

(B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. **It does not include the beneficiary of a visa petition [emphasis added].** An affected party may be represented by an attorney or representative . . . .

In the present case, neither the beneficiary of the instant visa petition nor her representative has the standing to file a motion to reopen or a motion to reconsider, and the record does not indicate that the

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<sup>1</sup> Pursuant to the regulation at 8 C.F.R. § 103.5(a)(1), motions to reopen and reconsider must be filed within 30 days of the USCIS decision (33 days if service is by mail), except that failure to file a motion to reopen within the required period may be excused at USCIS discretion "where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner." Here, counsel asserts that the AAO's decision was not received by the parties in this matter. However, as discussed above, counsel makes this claim on behalf of the beneficiary, rather than the petitioner, the only party with standing in this proceeding. Accordingly, counsel's assertion does not establish a basis on which to excuse the late filing of the Form I-290B.

petitioner has consented to the filing of any motions. Accordingly, the motions to reopen and reconsider will be dismissed as improperly filed pursuant to 8 C.F.R. § 103.5(a)(4).

Even if we were to accept the motions to reopen and reconsider, counsel's assertions regarding the continuing validity of the visa petition for the purposes of porting to new employment under the American Competitiveness in the Twenty-First Century Act of 2000 (AC21) would not be persuasive. Records maintained by the California Secretary of State reflect that the petitioner's Articles of Organization were cancelled by the petitioner as of December 28, 2012.<sup>2</sup> If the petitioner is no longer in business, then no *bona fide* job offer exists, and the petition and motions would be moot.<sup>3</sup> Even if the motions established a basis for approving the petition, the approval of the petition would be subject to automatic revocation due to the termination of the petitioner's business. See 8 C.F.R. § 205.1(a)(iii)(D).

As noted by counsel, the only instance in which the approval of a Form I-140 petition may be revoked and the petition remain valid for porting purposes under AC21 is when the revocation is based on a withdrawal that was submitted more than 180 days after the filing of a beneficiary's Form I-485, Application to Register Permanent Residence or Adjust Status. See Memorandum from William R. Yates, Associate Director for Operations, U.S. Citizenship and Immigration Services, *Interim Guidance for Processing Form I-140 Employment-Based Immigrant Petitions and Form I-485 and H-1B Petitions Affected by the American Competitiveness in the Twenty-First Century Act of 2000 (AC21) (Public Law 106-313)*, HQOPRD 70/6.2.8-P (May 12, 2005). Here, California records establish that the petitioner's business ceased to operate as of December 28, 2012. Therefore, as of December 28, 2012, the instant visa petition was automatically revoked by operation of law and is no longer valid for porting purposes under AC21.

The motion to reopen and motion to reconsider have been filed by the beneficiary. Therefore, they will be dismissed as improperly filed pursuant to 8 C.F.R. § 103.5(a)(4).

**ORDER:** The motion to reopen and the motion to reconsider are dismissed as improperly filed.

Attachment

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<sup>2</sup> A copy of the status report for the company is attached. See [http://\[REDACTED\]](http://[REDACTED])

<sup>3</sup> We also note that the record indicates that the offered position was not a *bona fide* job offer at the time of the visa petition's approval. In a March 19, 2009 letter, the petitioner states that it was never his company's intention to hire an administrative assistant. Pursuant to the regulation at 8 C.F.R. § 204.5(c), a petitioner must demonstrate a continuing desire and intent to employ the beneficiary permanently in the offered position.