



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

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

MATTER OF A-1P-

DATE: JULY 19, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a sole proprietor who operates a restaurant, seeks to permanently employ the Beneficiary as a food service manager. He requests classification of the Beneficiary as a skilled worker under the third preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This classification allows a U.S. employer to sponsor a foreign national with at least 2 years of experience or training.

On December 5, 2006, the Acting Director, Texas Service Center, denied the petition. Because the Petitioner lacks U.S. citizenship or lawful permanent residence, the Acting Director concluded that the record did not establish the Petitioner's eligibility to offer permanent employment. The Acting Director also found that the Petitioner did not sign the petition as required.

On February 4, 2009, we affirmed the Acting Director's decision.¹ After reopening the matter on our own motion, we again dismissed the appeal on April 22, 2010 because the U.S. Department of Labor (DOL) had revoked the approval of the accompanying labor certification.

The matter is now before us on the Petitioner's motions to reopen and reconsider. The Petitioner informs us of his appeal of the labor certification revocation. But because government records indicate that he has since withdrawn that appeal, we will deny the motion to reopen and the motion to reconsider.

Skilled workers must be capable of performing labor "not of a temporary or seasonal nature." Section 204(b)(3)(A)(i) of the Act.

A skilled worker petition must be accompanied by a valid, individual labor certification, an application for Schedule A designation, or documentation of a beneficiary's qualifications for a shortage occupation. 8 C.F.R. § 204.5(l)(3)(i). The DOL may revoke a labor certification's approval if it was "not justified." 20 C.F.R. § 656.32(a).

¹ The Petitioner challenged our appellate decision in the U.S. District Court, District of Massachusetts, which dismissed the action. *See Shenouda v. Roark*, No. 09-10785-RGS, 2009 WL 4782098 (D. Mass. Dec. 9, 2009).

In the instant case, an ETA Form 9089, Application for Permanent Employment Certification (labor certification), accompanies the petition. The labor certification indicates its approval by the DOL on July 19, 2006.

On November 30, 2009, however, the DOL revoked the labor certification's approval. The DOL concluded that the Petitioner "was not an employer for purposes of obtaining a labor certification, making the filed application void and the granted certification unjustified." The DOL noted that, in defining the term "employer," the agency's regulation at 20 C.F.R. § 656.3 bars a person "temporarily in the United States" from sponsoring a foreign national for permanent employment.

The record indicates the Petitioner's U.S. immigration status is temporary. On March 8, 2007, an Immigration Judge ordered him removed from the United States, but withheld deportation to his home country of Egypt. *See* section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3) (requiring an Immigration Judge to restrict the removal of a foreign national to a country where his life or freedom would be threatened).

A grant of withholding does not authorize a foreign national to permanently remain in the United States. *See* 8 C.F.R. § 208.24(b) (allowing U.S. Citizenship and Immigration Services (USCIS) to terminate withholding status if circumstances change, the persecution claim was found to be fraudulent, or the foreign national commits an act that renders him ineligible for the relief); *see also Matter of Sun*, 12 I&N Dec. 800, 804 (Reg'l Comm'r 1968) (holding that the status of a petitioner subject to an outstanding order of deportation "is very much temporary and unsettled," and "any offer of employment made by him is without any basis of permanency").

A sole proprietorship and its owner are considered to be the same legal entity. *Matter of United Inv. Grp.*, 19 I&N Dec. 248, 250 (Reg'l Comm'r 1984). Thus, the Petitioner has temporary U.S. immigration status and is ineligible to offer permanent employment to the Beneficiary.

On motion, the Petitioner documents his appeal of the labor certification revocation decision, asserting that the decision may change. But online records indicate that, on April 7, 2015, the Board of Alien Labor Certification Appeals (BALCA) dismissed the Petitioner's appeal. *See* U.S. Dep't of Labor, Office of Admin. Law Judges, at <http://www.oalj.dol.gov/libina.htm> (accessed June 27, 2016). The BALCA stated that "[t]he Employer informed the Board that it no longer wishes to proceed with the above-captioned appeal." *Id.*

Thus, the record establishes a final, administrative decision revoking the approval of the accompanying labor certification. Contrary to 8 C.F.R. § 204.5(l)(3)(i), a valid, individual labor certification no longer accompanies the petition. The record also lacks evidence of an application for Schedule A designation or documentation of the Beneficiary's qualifications for a shortage occupation. We will therefore deny the Petitioner's motions to reopen and reconsider. The appeal will remain dismissed.

Matter of A-IP-

A petitioner bears the burden of establishing its eligibility for a requested benefit. Section 291 of the Act. 8 U.S.C. 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the instant Petitioner did not meet that burden.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of A-IP-*, ID# 18466 (AAO July 19, 2016)