



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

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

In Re: 02423968

Date: JUL. 27, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Petitioner, a nonprofit corporation that operates a church, sought to permanently employ the Beneficiary as a pastor. The church requested his classification under the second-preference, immigrant category as a member of the professions holding an advanced degree or its equivalent. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A).

After the filing's initial grant, the Director of the Nebraska Service Center revoked the petition's approval. The Director concluded that the Petitioner willfully concealed the fraternal relationship between the church's incorporator and the Beneficiary. On appeal, the Petitioner asserts that the misrepresentation was neither willful nor material, and that, before the petition's revocation, the church retracted the falsehood.

The Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988) (discussing the burden of proof in revocation proceedings); *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010) (discussing the standard of proof). Upon *de novo* review, we note that, after the appeal's filing, the Beneficiary asked U.S. Citizenship and Immigration Services (USCIS) for permission to "port" to another employer. We will therefore withdraw the Director's decision and remand the matter for consideration of whether the Beneficiary qualifies for portability and properly requested to port.

## I. LAW

Employment-based, immigrant visa petitions "shall remain valid" for certain beneficiaries who obtain new job offers from the same or different employers. Section 204(j) of the Act. To qualify for portability, beneficiaries must have filed applications for adjustment of status to that of lawful permanent residents that remain unadjudicated for at least 180 days, and their new job offers must be in the same or similar occupational classifications as the jobs stated in their petitions. *Id.* If beneficiaries qualify for portability and properly requested to port, USCIS treats them as "affected parties" in petition revocation proceedings. *Matter of V-S-G- Inc.*, Adopted Decision 2017-06 (AAO Nov. 11, 2017).

## II. ANALYSIS

In April 2019, about eight months after the Petitioner filed the appeal, the Beneficiary submitted a Form I-485 Supplement J to USCIS, requesting permission to port to another employer. He indicated his acceptance of a new job offer as a pastor with another church.

A beneficiary's potential eligibility to port to a new employer does not preclude USCIS' authorization to revoke a petition's approval. *Herrera v. USCIS*, 571 F.3d 881, 887, 889 (9th Cir. 2009) (stating that "in order for a petition to 'remain' valid, it must have been valid from the start"). But the Director did not have an opportunity to consider the Beneficiary's request to port and thus his potential ability to participate as an affected party in the revocation proceedings. We will therefore withdraw the Director's decision and remand the matter for consideration of the Beneficiary's qualifications to port to the new employer and the validity of his request to do so.

If the Director finds the Beneficiary eligible to port and his portability request properly executed, she should issue a new notice of intent to revoke (NOIR) the petition's approval to both the Petitioner and the Beneficiary. In contrast, if the Director finds the Beneficiary ineligible to port or his portability request improperly executed, she should issue a new NOIR to only the Petitioner.

Either way, if supported by the record, the new NOIR(s) may notify the applicable party(ies) of different or additional potential grounds of revocation. The Director, however, must afford the party(ies) a reasonable opportunity (ies) to respond to all potential grounds. Upon receipt of a timely response(s), she should review the entire record and issue a new decision.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.