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## USCIS Designates Adopted Decisions Defining Affected Parties, Function Managers

**Legal Update**

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By Immigration Group

*This article was prepared with the assistance of ABIL, the Alliance of Business Immigration Lawyers, of which Loan Huynh, Fredrikson Immigration Department Chair, is a member.*

**Matter of V-S-G Inc. (AAO Nov. 11, 2017), Adopted Decision 2017-06**

This decision clarifies that beneficiaries of valid employment-based immigrant visa petitions who are eligible to change jobs or employers (“port”) and who have properly requested to do so under INA § 204(j) are “affected parties” under Department of Homeland Security regulations for purposes of revocation proceedings of their visa petitions and must be afforded an opportunity to participate in those proceedings.

The USCIS memorandum notes that other kinds of visa petition beneficiaries, and the subsequent employers of beneficiaries who have ported or sought to port, are not affected parties under DHS regulations and may not participate in visa revocation proceedings.

The AAO decision states that it “settles a tension between longstanding agency regulations and subsequent developments in the law regarding who is a cognizable party to a Form I-140, Immigrant Petition for Alien Worker.” The decision notes that traditionally, the applicant or petitioner is the only recognized party to a proceeding; that is, the beneficiary of a petition generally does not have the ability to participate in the immigration proceeding initiated by the petitioner. The decision sets forth a scenario in which an I-140 beneficiary may become a recognized party in certain limited circumstances in light of the American Competitiveness in the Twenty-First Century Act of 2000 (AC21) and one of its amendments. In so doing, the decision explains the current USCIS interpretation of applicable regulations to allow such a beneficiary to participate in relevant administrative proceedings.

The decision concludes:

Because we find that beneficiaries who are eligible to port and properly request to port under AC21 are within the statute’s zone of interests, USCIS interprets that statute as requiring a change in the agency’s historical interpretation of the

applicable DHS regulations. Our new interpretation is to treat these beneficiaries as affected parties who may participate in revocation proceedings related to their underlying immigrant visa petitions. Because the Beneficiary in this case, who is eligible to port and properly requested to port in compliance with the requirements under AC21, did not have an opportunity to so participate, we will reopen these proceedings and reinstate the Form I-140 immigrant visa petition relating to the Beneficiary and remand these proceedings to the Director, who must afford the Beneficiary an opportunity to respond to any future [Notice of Intent to Revoke] related to this I-140 petition. Should the Director thereafter revoke the immigrant petition's approval, the Beneficiary may appeal or file a motion to reopen or reconsider from the revocation or he may participate in proceedings arising from an appeal or motion filed by the Petitioner relating to this petition.

### ***Matter of G- Inc. (AAO Nov. 8, 2017), Adopted Decision 2017-05***

This decision provides important guidance to U.S. employers who transfer “function managers” (those who primarily manage essential functions rather than people) under the L-1 intracompany visa. A USCIS memorandum explaining the adoption of this decision notes:

*Matter of G- Inc.* clarifies that, to establish that a beneficiary will be employed in a managerial capacity as a “function manager,” the petitioner must demonstrate that: (1) the function is a clearly defined activity; (2) the function is “essential,” i.e., core to the organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the function; (4) the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function's day-to-day operations.

Commentary on *Matter of G-* is found [here](#).