U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32130492

Date: JULY 11, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Skilled Worker)

The Petitioner, a non-profit healthcare system, seeks to employ the Beneficiary as a registered nurse. The company requests her classification under the employment-based, third-preference (EB-3) immigrant visa category as a "skilled worker." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). Organizations may sponsor noncitizens for permanent residence in this category to work in jobs requiring at least two years of training or experience. *Id.*

After first granting the filing, the Director of the Nebraska Service Center revoked the petition's approval. The Director concluded that the Petitioner did not respond to the Director's notice of intent to revoke (NOIR) the petition. On appeal, the Petitioner contends that it timely responded to the notice.

In revocation proceedings, the Petitioner bears the burden of demonstrating eligibility by a preponderance of the evidence. *Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988) (citation omitted). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the organization has demonstrated its timely NOIR response. We will therefore withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Immigration as a skilled worker usually follows a three-step process. First, to permanently fill a U.S. job with a foreign worker, a prospective employer must obtain certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). If DOL approves a job, an employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). Section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F). Finally, if USCIS grants a petition, a noncitizen beneficiary may apply abroad for an immigrant visa or, if eligible, for adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

DOL, however, has already determined that the United States lacks sufficient nurses and that noncitizens' employment in these "Schedule A" positions will not harm the wages or working conditions of U.S. workers in similar positions. 20 C.F.R. § 656.5. Thus, Schedule A petitioners need

not advertise their jobs to U.S. workers in DOL labor certification proceedings. Rather, DOL authorizes USCIS to adjudicate Schedule A labor certification applications in immigrant visa petition proceedings. 20 C.F.R. § 656.15(a). Therefore, in this matter, USCIS rules not only on the immigrant visa petition, but also on its accompanying labor certification application. *See* 20 C.F.R. § 656.15(e) (describing USCIS labor certification determinations in Schedule A proceedings as "conclusive and final").

II. ANALYSIS

"[A]t any time" before a beneficiary obtains permanent residence, USCIS may revoke a petition's approval "for good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. Unless a petition is automatically revocable under 8 C.F.R. § 205.1(a)(3)(iii), USCIS must notify a petitioner of alleged revocation grounds and give the filer an opportunity to submit evidence supporting the petition and opposing the revocation grounds. 8 C.F.R. § 205.2(a), (b).

USCIS properly issues a NOIR if the unexplained and unrebutted record at the time of the notice's issuance would have warranted the petition's denial. *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987). If a petitioner does not timely respond to a NOIR or the response does not overcome the listed revocation grounds, USCIS may revoke a petition's approval. *Id.* at 452.

The Petitioner filed this petition on November 3, 2023. Five days later, USCIS approved it. On November 14, 2023, USCIS issued the NOIR. The NOIR alleges that the bank upon which the Petitioner's checks for filing and "premium processing" fees[1] were drawn did not honor the payments. The notice states that USCIS would revoke the petition's approval unless, by December 17, 2023, the Petitioner paid a service fee and submitted proof that the bank fulfilled the payments. *See* 8 C.F.R. § 106.1(c)(2) (allowing USCIS to revoke a petition's approval if a bank does not honor the filing's fee payment). USCIS records do not show the Director's receipt of a NOIR response by December 17, 2023. The Director therefore revoked the petition's approval on January 11, 2024.

The record supports the Director's proper issuance of the NOIR. USCIS records do not show the Petitioner's submission of a NOIR response. The response's omission would have warranted the petition's revocation. *See Matter of Estime*, 19 I&N Dec. at 452. Thus, the Director properly issued the NOIR.

On appeal, however, the Petitioner submits evidence that it timely responded to the NOIR. The Petitioner provides copies of a courier company's online tracking receipt, referencing the petition and showing the package's November 29, 2023 receipt at the service center's premium processing unit. A copy of the Petitioner's NOIR response shows that it included: copies of the fronts and banks of the organization's fee checks showing the bank's November 7, 2023 payment of them; proof of the organization's payment of the service fee; and copies of a November 23, 2023 e-mail exchange between counsel and a representative of the premium processing unit.

[1] In exchange for additional fees, certain petitioners may request premium processing of their petitions within 15 business days of the filings. 8 C.F.R. § 106.4(a),(b).

Contrary to the Director's revocation decision, a preponderance of the evidence demonstrates the Petitioner's timely response to the NOIR. We will therefore withdraw the decision.

The Director did not have an opportunity to review the Petitioner's NOIR response. We will therefore remand the matter. On remand, the Director should review the entire record, including the organization's NOIR response, and enter a new decision.

III. CONCLUSION

A preponderance of the evidence demonstrates the Petitioner's timely response to the Director's NOIR.

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