U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-E-, INC.

DATE: JULY 25, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an engineering company, seeks to employ the Beneficiary as an accountant. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. *See* Immigration and Nationality Act section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Texas Service Center initially approved the petition, but subsequently revoked the approval on the ground that the Petitioner did not respond to a request for additional evidence relating to the Beneficiary's qualifications and the *bona fides* of the job offer. The matter is now before us on appeal.

Upon *de novo* review, we will withdraw the Director's decision and remand the case to the Director for further consideration and the issuance of a new decision.

On September 27, 2016, ten years after approving the petition, Director issued a notice of intent to revoke (NOIR) the approval of the petition. The NOIR stated that the Beneficiary did not appear to have the requisite employment experience to qualify for the offered position under the terms of the labor certification, and that the job offer did not appear to be *bona fide*.

The NOIR was mailed to the Petitioner at the address in Virginia, where it was located at the time the petition was filed and approved in 2006. U.S. Citizenship and Immigration Services (USCIS) records show that the NOIR was returned as undeliverable on October 18, 2016, and that an address change was recorded on October 26, 2016. It does not appear that the Director issued a new NOIR to the Petitioner's current address at this time.

On November 15, 2016, the Director issued a decision denying the petition on the ground that the Petitioner did not respond to the request for additional evidence. Since the petition had previously been approved, the decision should have been a notice of revocation not a petition denial. The Director's decision did not mention a NOIR but instead stated that the Petitioner did not submit requested additional evidence.

USCIS records indicate that the decision was initially returned as undeliverable, but was mailed again to the Petitioner's current address in [redacted] Virginia on November 23, 2016.

On appeal, the Petitioner states that it did not receive the NOIR until November 28, 2016, the same day it received the Director's decision, and therefore was unable to respond to the NOIR. On appeal, the Petitioner submitted a copy of the NOIR it received, which is still addressed to the Petitioner's old address in [redacted] Virginia, and bears a stamp indicating that it was at the Texas Service Center on November 22, 2016. The Petitioner also states that it moved from its old address in [redacted] Virginia, to its new address in [redacted] Virginia, in October 2009.

Based on USCIS records and the Petitioner's testimony, it appears that USCIS had evidence of the Petitioner's new address by October 2016. The Director should have re-issued the NOIR to the Petitioner's current address in [redacted] Virginia, and provided the Petitioner with an opportunity to submit the requested documentation before issuing a decision.

Due to the procedural issues discussed above, we will remand this case to the Director for further consideration. After reviewing the new evidence submitted on appeal, if the Director intends to revoke the approval of the petition, it should issue a new NOIR to the Petitioner at its current address.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of N-E-, Inc.*, ID# 483816 (AAO July 25, 2017)