U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31300876

Date: JUL. 30, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a researcher in communication and networking technologies, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center (TSC) initially approved the petition, but subsequently revoked the approval on notice when the premium processing fee was not honored. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

Every benefit request must be accompanied by the fee(s) required by regulation. 8 C.F.R. § 103.2(a)(1). A petitioner may submit a request for premium processing of certain immigration benefits requests, subject to additional fees. 8 C.F.R. § 106.4. If a benefit request was approved, but a payment is not honored by a bank or financial institution, "the approval may be revoked upon notice, rescinded, or canceled." 8 C.F.R. §106.1(c)(2). If the approved benefit request requires multiple fees, approval may be revoked if any fee, including a fee to request premium processing, is not honored. *Id.*

The U.S. Citizenship and Immigration Services (USCIS) policy manual clarifies the procedures for dishonored payments in premium processing cases:

Returned Payment for Premium Processing Service Requests

> If a premium processing fee for a Request for Premium Processing Service (Form I-907) is declined or returned when it is filed at the same time as a Petition for Nonimmigrant Worker (Form I-129) or Immigrant Petition for Alien Workers (Form I-140), USCIS rejects the entire filing.
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> If USCIS has approved the petition and any fee, including one fee of a multiple fee filing, is declined or returned, USCIS may revoke the approval upon notice.
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> In this case, USCIS issues a Notice of Intent to Revoke (NOIR) to the requestor. If the requestor does not rectify the declined or returned payment within the requisite NOIR time period, USCIS revokes the approval and retains (and does not refund) any fee that was honored in association with the approval.

1 *USCIS Policy Manual* B.6(B), https://www.uscis.gov/policy-manual.

To sufficiently respond to a notice of intent to revoke (NOIR) issued based on a returned filing fee, the petitioner or applicant "must, within the requisite NOIR time period, provide payment of the correct fee amount or demonstrate that the payment was honored or that it was rejected by USCIS by mistake." *Id.* Otherwise, USCIS will conclude that the petitioner or applicant did not pay the required fees under 8 C.F.R. § 103.2(a)(1) and will revoke the approval of the benefit request. *Id.*

The Petitioner filed the EB-2 classification petition, which was received and receipted by USCIS in January of 2023. The Petitioner then attempted to submit a premium processing request in February of 2023. However, a series of mailing delays and caused the Petitioner to cancel the check associated with this filing and submit a second premium processing request. The second request was received in late February. Then, the first request resurfaced and was also delivered in late February. The Petitioner contacted the TSC, hoping to clarify the situation and ensure that the second submission would be receipted and processed for fee payment.

The Director approved the Petition on March 3, 2023. Subsequently, on March 8, the Director determined that the premium processing fee had not been honored. At this time, the Director appears to have issued a notice of rejection. However, the Director subsequently issued a NOIR in April of 2023. The NOIR indicated that the petition would be revoked unless the Petitioner provided evidence "that the payment method was valid and was honored by the financial institution." The NOIR also indicated that the Petitioner could "not respond to this notice by submitting any form of repayment."

On appeal, the Petitioner outlines the mailing issues above and restates various arguments made in response to the NOIR, most relevantly: confirming that the second submission contained a valid check and was received at TSC before the cancelled check, providing records of communications with TSC regarding the receipt and processing of duplicate requests, and providing proof of sufficient funds in the associated checking account. The Petitioner argues that rejection was improper in this case because the benefit had already been approved, and the Director's reliance on 8 C.F.R. 103.2 was misplaced. Rather, the Petitioner contends that the Director should have relied on 8 C.F.R. 106.1(C)(2).

As an initial matter, we note that we have jurisdiction to decide this appeal. We do not have jurisdiction to review rejections of benefits, but we do have the authority to review revocations. *See generally* 8 C.F.R. §§ 103.2(7)(iii), 106.1(c)(2). Here, the Director issued both a notice of rejection and a NOIR. However, the policy manual indicates that the NOIR was the appropriate notice given the prior approval of the petition. 1 *USCIS Policy Manual* B.6(B), https://www.uscis.gov/policy-manual. Despite the issuance of the rejection notice, the Director appears to have ultimately decided the case by issuing a revocation after the NOIR response was received. We therefore have jurisdiction to review the revocation of the approval for nonpayment of fees.

Although the Director followed the proper steps in issuing a NOIR prior to revocation of the case, the Director's NOIR did not provide the Petitioner with complete and correct information regarding the options in response. The NOIR limited the Petitioner by indicating that a response required a showing that payment was valid and honored by the financial institution and by not allowing repayment as an option. However, the policy manual allows for other "sufficient" responses to a NOIR, including making a payment for the fee amount or showing that USCIS made an error. *Id.* Because the Petitioner was not afforded the full range of corrective measures during the NOIR response period, the Director's revocation for nonpayment of fees was in error.

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