U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C- CORP.

DATE: MAR. 1, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a former owner and operator of a doughnut shop, sought to employ the Beneficiary as a doughnut maker. It requested his classification as an "other worker" under the third-preference, immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). This category allows a U.S. business to sponsor a foreign national for lawful permanent resident status as an unskilled worker.

After the filing's initial grant, the Acting Director of the Nebraska Service Center revoked the petition's approval and denied the Petitioner's following motions to reopen and reconsider. The Director concluded that the Petitioner did not establish the *bona fides* of the job opportunity, and thus the validity of the accompanying certification from the U.S. Department of Labor.

On appeal, the Petitioner submits additional evidence and states that, before the decision, the Director did not notify it of the alleged revocation grounds. The Petitioner also contends that the Director disregarded evidence of the position's availability to U.S. workers.

Notwithstanding automatic revocation, U.S. Citizenship and Immigration Services (USCIS) may not revoke a petition's approval without notifying a petitioner of the alleged grounds and affording it an opportunity to respond. 8 C.F.R. § 205.2(b) (providing that "[r]evocation of the approval of a petition . . . under . . . this section will be made only on notice to the petitioner"). On appeal, counsel states that neither he nor the Petitioner received a notice of intent to revoke (NOIR) the petition. The file contains a copy of an NOIR addressed to the Petitioner in care of counsel, but neither the file nor USCIS electronic records indicate the notice's mailing. A preponderance of evidence therefore indicates that, before revoking the petition's approval, USCIS did not notify the Petitioner of the alleged grounds or give it an opportunity to respond.

On remand, the Director should mail the Petitioner an NOIR and provide it with a reasonable opportunity to respond to the notice. Upon receipt of a timely response, the Director should review the entire record and enter a new decision.

ORDER: The decision of the Director is withdrawn.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 C- Corp.*, ID# 1066978 (AAO Mar. 1, 2018)