U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C- CORP.

DATE: MAR. 16, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a former operator of a doughnut shop, sought to employ the Beneficiary as a doughnut machine operator. It requested his classification as an "other worker" under the third-preference, immigrant classification. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). This employment-based immigrant classification allows a U.S. employer to sponsor a foreign national for lawful permanent resident status to work in a position that requires less than two years of training or experience.

After the petition was initially approved, the Acting Director of the Nebraska Service Center revoked the petition's approval. The Director concluded that, as of approval, the Petitioner did not establish the *bona fides* of the job opportunity or the Beneficiary's possession of the minimum experience required for the offered position.

On appeal, the Petitioner submits additional evidence and asserts that the Director did not properly notify it of the revocation grounds. Upon *de novo* review, we will remand this matter to the Director for further consideration and the entry of a new decision.

If supported by the record, U.S. Citizenship and Immigration Services (USCIS) may revoke a petition based merely on its erroneous approval. *Matter of Ho*, 19 I&N Dec. 581, 590 (BIA 1988). However, USCIS can only revoke approvals of petitions whose beneficiaries have not yet adjusted to lawful permanent resident status or have not gained admissions to the United States as immigrants. Indeed, USCIS instructs its officers:

> Do not institute revocation proceedings if the beneficiary has already been adjusted or has been admitted to the United States with an immigrant visa. When the petition has been used, in effect, it no longer exists and the approval cannot be revoked.

USCIS, *Adjudicator's Field Manual*, Ch. 20.3(b)(2), https://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1.html (last visited Feb. 7, 2018).

Here, USCIS records indicate that the Beneficiary adjusted his status based on the approved petition more than a year before the Director revoked the petition's approval. Therefore, we are remanding the matter to the Director to address this procedural discrepancy.

ORDER: The Director's decision 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# 1043530 (AAO Mar. 16, 2018)