U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37313322

Date: MAR. 18, 2025

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a completions and wells engineer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center, after issuing a notice of intent to revoke (NOIR), revoked the approval of the petition when the Petitioner failed to respond. 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 dismiss the appeal.

Section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." Regarding revocation on notice, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the Director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. A beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* In addition, a revocation can only be grounded upon, and the petitioner is only obliged to respond to, the allegations in the NOIR. *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988). In general, the Director's decision to revoke the approval of a petition will be affirmed if a petitioner fails to offer a timely explanation or rebuttal to a properly issued notice of intent to revoke. *Id.* at 570.

After reviewing the record and concluding that the evidence did not establish that the Petitioner qualified for the requested classification[1] and consistent with the regulations at 8 C.F.R. §§ 205.2(a), (b) and § 103.8(a)(1), the Director issued a NOIR on August 7, 2024, and afforded the Petitioner 33 days to submit a response. The Director revoked the approval of the petition following the expiration of this 33-day period, emphasizing that U.S. Citizenship and Immigration Services (USCIS) had received no response.

On appeal, the Petitioner asserts that "there was a failure of notice" which "violates both statutory requirements and the petitioner's constitutional right to due process" because "neither the petitioner nor the petitioner's legal counsel received the NOIR, thereby depriving the petitioner of the opportunity to respond to the allegations prior to the revocation." The Petitioner also states that "there is no proof of mailing to demonstrate that USCIS complied with its service obligations."

Contrary to the Petitioner's assertions, however, the record reflects that the Director did comply with the applicable regulations for service of USCIS notices and decisions by mailing the NOIR and notice of revocation (NOR) to both the Petitioner's attorney of record and the Petitioner (which was in care of his attorney of record) at their last known address. *See* 8 C.F.R. §§ 103.8(a)(1), 205.2 (b), (c), and 292.5(a). Service by mail is complete upon mailing. 8 C.F.R. § 103.8(b). *See also Wah Yuet (USA) Inc. v. Ashcroft*, No. CV 04-9145 CAS (SSx), 2006 WL 8430892, *7 (C.D. Cal. Apr. 13, 2006) ("INS [, the former Immigration and Naturalization Service,] properly effectuated service when it mailed the NOIR to Wah Yuet at its last known address."). While we acknowledge the Petitioner's statements that he received the NOR, but not the NOIR which was mailed to the same address, a review of USCIS systems indicates that the NOIR was not returned to USCIS as undeliverable.

It is a well-established principle that "a presumption of regularity attaches to the actions of Government agencies" absent clear evidence to the contrary. *See U.S. Postal Serv. v. Gregory*, 534 U.S. 1, 10 (2001) (citing *United States v. Chem. Found.*, 272 U.S. 1, 14-15 (1926)). This "presumption of regularity" presumes the accuracy of information recorded in USCIS records and, thus, the Director's service of the NOIR by mail.[2]

[1] We note the NOIR was not based on derogatory information unknown to the Petitioner and thus we will not address the Petitioner's arguments related to 8 C.F.R. § 103.2(b)(16).

[2] As the Director did provide notice to the Petitioner and his attorney of record, we will not address the Petitioner's assertions that "USCIS's failure to provide proper notice violated the petitioner's due process rights."

Because the Petitioner did not submit a response to the Director's properly issued NOIR, we will affirm the Director's decision to revoke the approval of the petition. The appeal will be dismissed.

ORDER: The appeal is dismissed.