U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34834227

Date: NOV. 21, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Other Worker)

The Petitioner, a meat market operator, seeks to employ the Beneficiary as a butcher. The company requests his classification under the employment-based, third-preference (EB-3) immigrant visa category as an "other worker." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). Businesses may sponsor noncitizens for U.S. permanent residence in this category to work in jobs requiring less than two years of training or experience. *Id.*

After first granting the filing, the Director of the Texas Service Center revoked the petition's approval and dismissed the Petitioner's following combined motions to reopen and reconsider. The Director concluded that the company sent its motions to the wrong U.S. Citizenship and Immigration Services (USCIS) location. On appeal, the Petitioner contends that USCIS received the papers at the correct address.

In revocation proceedings, the Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the company has established that it submitted its motions to the designated USCIS address. We will therefore withdraw the Director's contrary decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Immigration as an other – or "unskilled" – worker generally follows a three-step process. First, a prospective employer must obtain certification from the U.S. Department of Labor (DOL) that: there are insufficient U.S. workers able, willing, qualified, and available for an offered job; and a noncitizen's permanent employment in the position would not harm wages and working conditions of U.S. workers with similar jobs. Section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i).

Second, an employer must submit a DOL-approved labor certification with an immigrant visa petition to USCIS. Section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F). Among other things, USCIS

determines whether a noncitizen beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(l)(3)(ii)(D).

Finally, if USCIS approves a petition, a beneficiary may apply for an immigrant visa abroad or, if eligible, "adjustment of status" in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

But, "at any time" before a beneficiary obtains permanent residence, USCIS may revoke a petition's approval for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. A petition's erroneous approval may justify its revocation. *Matter of Ho*, 19 I&N Dec. at 590.

II. ANALYSIS

After receiving a revocation notice, a petitioner may file a motion to reopen, a motion to reconsider, or both. 8 C.F.R. § 103.5(a)(1)(i); 8 C.F.R. § 103.2(a)(1) (incorporating the instructions of Form I-290B, Notice of Appeal or Motion, into the regulations). A petitioner must generally file motions within 33 days of the date of the adverse decision's mailing. 8 C.F.R. § 103.5(a)(1)(i); 8 C.F.R. § 103.8(b)(1) (adding three days to the prescribed 30-day period when USCIS serves a revocation by mail). USCIS will not assign filing dates to motions until the Agency receives the benefit request "at the location designated for filing." 8 C.F.R. § 103.2(a)(7).

The Director revoked the approval of the Petitioner's petition on March 25, 2024, sending the written revocation decision to the company by mail. Thus, the company had to file its combined motions within the 33-day period ending April 29, 2024.[1]

The Petitioner sent its motions via a commercial overnight delivery service on April 24, 2024. USCIS records show that the Agency timely received them, issuing a receipt notice with an April 26, 2024 filing date. The Director, however, dismissed the motions, concluding that the company sent them to the wrong USCIS address. *See* 8 C.F.R. § 103.2(a)(7) (requiring USCIS' receipt of benefit requests "at the location designated for filing").

The revocation decision notified the Petitioner about its ability to file motions. In relevant part, the decision advised: "For the latest information on filing location, fee, and other requirements, please review the Form I-290B instructions at http://www.uscis.gov/forms, call our USCIS Contact Center at 1-800-375-5283, or visit your local USCIS office."

The Petitioner states that it found the motions' filing location by visiting the USCIS online address listed in the revocation decision. The company provided a June 25, 2024 printout of the website's pages, designating the motions' correct filing location as the USCIS Phoenix Lockbox in Arizona. *See* USCIS, "Direct Filing Addresses for Form I-290B, Notice of Appeal or Motion," www.uscis.gov/i-290b-addresses ("Decision made by USCIS on any other kind of application," "Decision made by a USCIS service center on a form not listed in any section of the chart above"). Our research shows that the Agency website listed the same filing location on April 24, 2024, when the Petitioner sent its

[1] Because the thirty-third day fell on a Saturday, the period extended two days until the next business day. *See* 8 C.F.R. § 1.2 (defining the term "day").

motions. Also a copy of tracking information from the commercial overnight delivery service indicates the motions' April 26, 2024 delivery to the designated lockbox.

A preponderance of the evidence – including the filing location on the USCIS website, the delivery tracking information, and USCIS records indicating the Agency's issuance of a receipt notice – demonstrates the Petitioner's filing of its combined motions at the location designated for filing. We will therefore withdraw the Director's contrary decision.

The Director did not rule on the merits of the Petitioner's motions. Rather than consider the filings' substance in the first instance, we will remand the matter.

On remand, the Director must consider the motions as filed at the correct location. Assuming the motions meet remaining regulatory requirements, the Director should consider their merits and issue a new decision.

III. CONCLUSION

The Petitioner has demonstrated its filing of its combined motions at the designated USCIS location.

ORDER: The Director's decision is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis, which – if adverse to the Petitioner – shall be certified to us for review.