U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32485537

Date: SEP. 04, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Advanced Degree)

The Petitioner, a software design and development provider, seeks to employ the Beneficiary as a network engineer under the second-preference, immigrant classification for members of the professions with advanced degrees or their equivalents. Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A).

The petition was initially approved, but the Director of the Texas Service Center revoked the approval concluding that the Petitioner willfully misrepresented material facts. Prior to the revocation, the Petitioner submitted a written request to withdraw the petition. 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 accept the Petitioner's request to withdraw the petition and we will dismiss the appeal as moot.

Immigration as an advanced degree professional generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position. *Id*. Labor certification also indicates that the employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id*.

If DOL approves a position, an employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS considers whether a beneficiary meets the requirements of a certified position and a requested immigrant visa classification. If USCIS approves the petition, a foreign national may finally 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.

At any time before a beneficiary obtains lawful permanent residence, however, USCIS may revoke a petition's approval for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. If

supported by the record, a petition's erroneous approval may justify its revocation. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

The Petitioner filed its I-140 petition on behalf of the Beneficiary to work as a network engineer in May 2015, and it was initially approved on September 29, 2015. On October 11, 2023, the Director sent the Petitioner a notice of intent to revoke (NOIR) the petition's approval. The Director incorrectly stated that the approved petition had been returned by the U.S. Department of State (DOS) "because it appeared that the beneficiary was not eligible for the requested benefit." In fact, the approved petition had not been sent to DOS, and accordingly not returned by DOS.

In the NOIR, the Director stated that DOS had determined that the Petitioner filed petitions "containing altered and fraudulent" documents. She also stated that DOL had determined that the Petitioner had "been ordered to pay back wages to its beneficiaries." Based on these DOS and DOL determinations, the Director stated, "The Petitioner willfully made a false representation by claiming the legitimacy of the employment documentation he submitted, which is material to whether the beneficiary is eligible for the requested benefit."

In response to the NOIR, the Petitioner submitted a letter dated November 8, 2023, from its president verifying that an offer of employment for the Beneficiary remained valid from the date the labor certification was filed. The Petitioner's president confirmed the Beneficiary's employment from March 2014 to February 2023. The response also included documentary evidence of the Beneficiary's paid wages and assigned work throughout his employment.

The Director revoked the approval of the petition in a notice of revocation (NOR). In the NOR, the Director reiterated the information in the NOIR but did not address or analyze any other evidence submitted in response to the NOIR.

On appeal, the Petitioner requests that the finding of willful misrepresentation be rescinded and also that its previously submitted request to withdraw the petition be honored.

Regarding the Director's finding of willful misrepresentation of a material fact, both the Director's NOIR and NOR are deficient, as they do not sufficiently explain the alleged misrepresentation. When revoking approval of a petition, a director has an affirmative duty to explain the specific reasons for the revocation; this duty includes informing a petitioner why the evidence did not to satisfy its burden of proof pursuant to section 291 of the Act. *See* 8 C.F.R. § 103.3(a)(1)(i). In this case, the Director alleges in the NOIR that the Petitioner willfully misrepresented that documents submitted in support of the petition were legitimate. However, the Director does not identify which documents, if any, were not legitimate. Further, the Director's decision in this case does not explain why the information provided in response to the NOIR was insufficient or how it failed to resolve the Director's concerns of misrepresentation.

Considering the above discussed deficiencies, we are withdrawing the Director's revocation and the finding of willful misrepresentation against the Petitioner.

The regulation at 8 C.F.R. § 103.2(b)(6) states that "[a]n applicant or petitioner may withdraw a benefit request at any time until a decision is issued by USCIS or, in the case of an approved petition, until

the person is admitted or granted adjustment or change of status, based on the petition." A petitioner's right to withdraw a visa petition is further enshrined in *Matter of Cintron*, 16 I&N Dec. 9 (BIA 1976), which stated: "Just as any United States citizen or lawful permanent resident may file a visa petition in behalf of an alien, so may he withdraw the petition before a decision has been rendered. The action of the District Director in refusing to consider the petition withdrawn was erroneous."

The Petitioner here was entitled to withdraw its approved I-140 petition as it requested to withdraw prior to a final decision being issued. The request to withdraw the petition is accepted, and the appeal is moot.

ORDER: The appeal is dismissed.