U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7163285

Date: SEPT. 28, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner seeks to employ the Beneficiary as a cook specializing in Chinese cuisine. The company requests his classification under the third-preference immigrant category as a skilled worker. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i).

After initially granting the filing, the Director of the Nebraska Service Center revoked the petition's approval. Finding that the Petitioner concealed a family relationship between one of the company's principals and the Beneficiary, the Director concluded that the petition lacks a valid certification from the U.S. Department of Labor (DOL).

Upon *de novo* review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as a skilled worker 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 DOL certification. *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 an offered position. *Id.* Labor certification also indicates that 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 determines whether a beneficiary meets the requirements of a DOL-certified position and a requested visa classification. If USCIS grants a 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.

"[A]t 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, the erroneous nature of a petition's approval justifies its revocation. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

II. SUFFICIENCY OF THE NOIR

USCIS may issue a notice of intent to revoke (NOIR) if the unexplained and unrebutted record at the time of the NOIR's issuance would have warranted the petition's denial. *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987). USCIS properly revokes a petition's approval if a petitioner's NOIR response does not overcome the stated revocation grounds. *Id.* at 451-52. A NOIR "must include a specific statement not only of the facts underlying the proposed action, but also of the supporting evidence." *Id.*, at 452.

> Where a notice of intention to revoke is based on an unsupported statement or an unstated presumption, or where the petitioner is unaware and has not been advised of derogatory evidence, revocation of the visa petition cannot be sustained, even if the petitioner did not respond to the notice of intention to revoke.

Id.

A revocation must stem from, and a petitioner need only respond to, factual allegations of a NOIR. *Matter of Arias*, 19 I&N Dec. 568, 570 (BIA 1988). "[C]onclusory, speculative, equivocal, and . . . irrelevant" allegations do not warrant revocation of a petition's approval. *Id.* Rather, "[s]pecific, concrete facts are meaningful." *Id.* at 570-71.

Here, the Director's NOIR states only that, during processing of the Beneficiary's immigrant visa application at a U.S. consulate, "it was discovered that [he] appears to have familial links with individuals affiliated with the petitioning entity."[1] The NOIR notes that, asked on the accompanying labor certification whether "there is a familial relationship between the owners, stockholders, corporate officers, incorporators, or partners and the alien," the Petitioner indicated "No." Thus, based on the alleged invalidity of the labor certification, the NOIR proposes revocation of the petition's approval. *See* 20 C.F.R. § 656.30(d) (authorizing USCIS to invalidate a labor certification after its issuance upon a finding of "fraud or willful misrepresentation of a material fact involving the labor certification application").

Without further details of the alleged misrepresentation, however, the NOIR would not have warranted the petition's denial. The NOIR does not describe evidence of the Beneficiary's purported family relationship to a principal of the Petitioner. *See Matter of Estime*, 19 I&N Dec. at 452 (requiring a NOIR to "include a specific statement . . . of the supporting evidence"). The NOIR states that a family relationship between the Beneficiary and a company principal "was discovered." But the notice does not identify the principal or describe his or her alleged family relationship to the Beneficiary. A "[c]onclusory" allegation would not support revocation of a petition's approval. *Matter of Arias*, 19 I&N Dec. at 570. In addition, before issuing an adverse decision, USCIS must advise a petitioner of material, derogatory information of which it is unaware and provide it with an opportunity to rebut

[1] The NOIR also alleges that the Beneficiary misrepresented his qualifying experience for the offered position. The Director, however, did not revoke the petition's approval on that ground.

that information. 8 C.F.R. § 103.2(b)(16)(i). Thus, the Petitioner deserves a more meaningful opportunity to rebut detailed, adverse information.

The revocation decision identifies the Beneficiary's purported relative as "the petitioner's husband."[2] However, the NOIR did not identify this relationship to allow the Petitioner an opportunity to address the specific derogatory information. Moreover, like the NOIR, the decision does not describe evidence of the purported relationship or the relative's status as a company principal. Thus, the record lacks derogatory information supporting the revocation. *See* 8 C.F.R. § 103.2(b)(16)(ii) (stating that, unless based on classified information, a determination of statutory eligibility must stem from "information contained in the record of proceeding which is disclosed to the applicant or petitioner"); *see also Matter of Estime*, 19 I&N Dec. at 451 (citations omitted).

Because of the defects discussed above, we will withdraw the Director's decision and remand the matter. On remand, the Director must issue a new NOIR specifying the facts and evidence supporting the proposed revocation grounds. At the Director's discretion, the new NOIR may also allege additional revocation grounds supported by the record.

The Director must afford the Petitioner a reasonable opportunity to respond to the new NOIR. *See* 8 C.F.R. § 205.2(b). 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 entry of a new decision consistent with the foregoing analysis.

[2] The decision apparently refers to the spouse of the petitioning corporation's sole shareholder.