U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24227654

Date: JAN. 20, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a provider of procurement-related sourcing and consulting services, seeks to permanently employ the Beneficiary as a client engagement manager. The company requests her classification under the second-preference, immigrant visa category as a member of the professions holding an advanced degree or its equivalent. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A).

After first granting the filing, the Director of the Texas Service Center revoked the petition's approval. The revocation decision inconsistently concludes that:

- U.S. Citizenship and Immigration Services (USCIS) "rejected" the petition because the Petitioner's bank did not honor the checks submitted for processing fee payments; and
- the Petitioner did not demonstrate its required ability to pay the offered position's proffered wage.

On appeal, the Petitioner requests the petition's retroactive approval. The company states that, for security reasons, its bank did not initially honor its fee checks to the government. But the Petitioner submits evidence that, before the company received the revocation decision, a USCIS customer service representative said the government had deposited the payments.

In these revocation proceedings, the Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of evidence. *See Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988). We exercise de novo, appellate review. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we conclude that USCIS revoked - rather than rejected - the petition and that the Petitioner did not receive required notice before the filing's revocation. We will therefore withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Immigration as an advanced degree professional generally follows a three-step process. First, a prospective employer must apply to the U.S. Department of Labor (DOL) for certification that: (1)

there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and (2) the employment of a noncitizen in the position won't harm wages and working conditions of U.S. workers with similar jobs. *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i).

Second, an employer must submit an approved labor certification with an immigrant visa petition to USCIS. *See* 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(k)(3)(i)(B).

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(a)(1) of the Act, 8 U.S.C. § 1255(a)(1).

"[A]t any time" before a beneficiary obtains lawful permanent residence, USCIS may revoke a petition's approval for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. The erroneous nature of a petition's approval justifies its revocation. *Matter of Ho*, 19 I&N Dec. at 590.

II. ANALYSIS

A. Rejection or Revocation?

The Director's decision indicates the petition's rejection and revocation. USCIS, however, could not have done both. If the Director rejected the petition, then USCIS did not accept it as filed and could not have legally approved it or revoked its approval. *See* 8 C.F.R. § 103.2(a)(7)(ii) ("A benefit request which is rejected will not retain a filing date.") Conversely, if the Director approved the petition and revoked its approval, then USCIS could not have rejected it.

The Petitioner's Form I-140, Immigrant Petition for Alien Workers, indicates that USCIS received the petition on January 10, 2022. USCIS information systems show the Agency's mailing of a receipt notice the following day. The Petitioner submits copies of bank records showing that, despite an account balance that dwarfed the processing fees' amount at that time, USCIS could not deposit the company's checks on January 12, 2022. The Petitioner states that its bank did not initially honor the checks for security reasons, as the bank did not recognize the Department of Homeland Security (DHS) as an authorized recipient of the company's funds. The Petitioner states that it immediately added DHS to the bank's list of authorized recipients.

A stamp on the Petitioner's Form I-140, dated January 18, 2022, indicates the petition's rejection for nonpayment. The Beneficiary's immigration file also contains copies of a "notice of rejection" to the Petitioner on the same date. The Form I-140, however, also contains an approval stamp dated January 18, 2022, and the Petitioner submits a copy of an approval notice with the same date. The company also states that USCIS mailed approval and denial notices on the same day.[1]

[1] The record does not indicate whether the Petitioner mistakenly refers to a rejection notice as a denial notice. A denial notice indicates USCIS' acceptance of a filing but the Agency's denial of the benefit request for eligibility reasons. In contrast, a rejection notice indicates USCIS' non-acceptance of a filing.

Despite lacking bank records showing deposits of its fee checks, the Petitioner states that it believed USCIS would try to redeposit them. *See* 8 C.F.R. § 103.2(a)(7)(ii)(D) (allowing USCIS to reject a filing because of insufficient funds only if the fee is returned as unpayable twice).[2] On May 10, 2022, however, the company contacted USCIS' National Customer Service Center. A copy of an email message from a paralegal at counsel's office to an employee of the Petitioner states that a customer service representative told the paralegal that the Agency deposited the Petitioner's fee checks on January 13, 2022, and the company should consider the petition to be approved. The following month, however, USCIS sent the Petitioner the revocation notice.

Although evidence indicates both USCIS' rejection and revocation of the petition, the record ultimately demonstrates the filing's revocation. USCIS information systems show that the Agency omitted issuance of a rejection notice but mailed receipt, approval, and revocation notices to the Petitioner. Also, USCIS did not return the original submission to the company as rejected. A preponderance of evidence therefore demonstrates that USCIS accepted the filing and later revoked the petition's approval.

B. The Petition's Revocation

If USCIS approves a petition and a financial institution does not honor the filing's remittance for the processing fee, the Agency may revoke the petition's approval. 8 C.F.R. § 106.1(c)(2). Before issuing a revocation on that basis, however, USCIS must send the petitioner a notice of intent to revoke (NOIR) the filing. *Id.*; *see also* 8 C.F.R. § 205.2(b). The NOIR must contain statements of fact and evidence supporting the revocation grounds. *Matter of Estime*, 19 I&N Dec. 450, 452 (BIA 1987). A petitioner must also receive "an opportunity to offer evidence in support of the petition . . . and in opposition to the grounds alleged for revocation of the approval." 8 C.F.R. § 205.2(b).

The record lacks evidence that the Director notified the Petitioner before revoking the petition's approval. USCIS information systems and the record do not indicate a NOIR's issuance, nor does the Petitioner state its receipt of one. If issued without proper notice, the revocation would violate regulatory requirements. We will therefore withdraw the Director's revocation.

Because the record does not establish the valid revocation of the petition's approval, we will remand the matter. To seek revocation of the petition's approval on remand, the Director must first issue the Petitioner a NOIR.

C. The Beneficiary's Education

Although unaddressed by the Director, the Petitioner has not demonstrated the Beneficiary's qualifying education for the offered position. A petitioner must demonstrate a beneficiary's possession of all DOL-certificated job requirements of a position by a petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). This petition's priority

[2] But "[f]inancial instruments returned as unpayable for a reason other than insufficient funds will not be redeposited." *Id.* Because the bank returned the Petitioner's checks as unpayable for security reasons and not for insufficient funds, USCIS may not have tried to redeposit the financial instruments.

date is February 25, 2021, the date DOL accepted the labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

When assessing a beneficiary's qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine a position's minimum job requirements. USCIS may neither ignore a certification term nor impose unstated requirements. *E.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

The Petitioner's labor certification states the minimum educational requirements of the offered position of client engagement manager as a U.S. bachelor of science degree with a "[m]ajor field of study" in "[f]inance or a related field."[3]

On the labor certification, the Beneficiary attested that, by the petition's priority date and before she began working for the Petitioner in 2019, a U.S. college awarded her a bachelor's degree in finance. The Petitioner submitted a copy of a bachelor of science diploma in the Beneficiary's name from the college and a corresponding course transcript.

These materials demonstrate the Beneficiary's possession of a U.S. bachelor of science degree. But they do not establish that her degree is in an acceptable field of study. Neither the diploma nor the transcript specifies her major field. The transcript states that her degree has "concentrations" in economics and finance. The transcript lists "Course Ids" indicating the Beneficiary's completion of six economics courses totaling 24 credits and four finance classes totaling 16 credits. An online news article about the Beneficiary's college from 2014, the year of her graduation, states that the school offered undergraduates only one major field of study: business. *See* Katie Kramer, CNBC, "[redacted]...," [redacted] 2014, https://www.cnbc.com/2014[redacted]html. Thus, the record does not establish that the Beneficiary's degree meets the offered position's field-of-study requirements.

On remand, the Director should issue a new NOIR asking the Petitioner to submit additional evidence that the Beneficiary's degree meets the field-of-study requirement in "finance or a related field." If supported by the record, the NOIR may include other potential grounds of revocation. The notice, however, must state facts and evidence supporting each revocation ground. *See Matter of Estime*, 19 I&N Dec. at 452. The notice must also afford the Petitioner a reasonable opportunity to respond to all potential grounds. *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.

III. CONCLUSION

The record does not demonstrate the Petitioner's receipt of required notice before the revocation of the petition's approval. Also, the company did not establish the Beneficiary's educational qualifications for the offered position.

[3] The labor certification states that a foreign educational equivalent is unacceptable.

ORDER: The Director's decision is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.