U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17933522

Date: AUG. 25, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner, a transportation and warehouse company, seeks to employ the Beneficiary as a bookkeeper. It requests skilled worker classification for the Beneficiary under the third-preference immigrant category. See Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based immigrant classification allows a U.S. employer to sponsor a foreign national for lawful permanent resident status to work in a position that requires at least two years of specialized training or experience.

The petition was initially approved. The Director of the Texas Service Center subsequently revoked the approval of the petition. On appeal, the Petitioner submits new evidence and asserts that the Director's decision to revoke the approval of the petition was erroneous.

The AAO reviews the questions in this matter de novo. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). It is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. See Section 291 of the Act, 8 U.S.C. § 1361; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). Upon de novo review, we will dismiss the appeal.

I. THE EMPLOYMENT-BASED IMMIGRATION PROCESS

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). See section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. See section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). See section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national 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.

Section 205 of the Act, 8 U.S.C. § 1155, provides that the Secretary of Homeland Security may "for good and sufficient cause, revoke the approval of any petition." By regulation this revocation authority is delegated to any USCIS officer who is authorized to approve an immigrant visa petition "when the necessity for the revocation comes to the attention of [USCIS]." 8 C.F.R. § 205.2(a). USCIS must give the petitioner notice of its intent to revoke the prior approval of the petition and the opportunity to submit evidence in opposition thereto, before proceeding with written notice of revocation. See 8 C.F.R. § 205.2(b) and (c). A notice of intent to revoke (NOIR) "is not properly issued unless there is 'good and sufficient cause' and the notice includes a specific statement not only of the facts underlying the proposed action, but also of the supporting evidence." Matter of Estime, 19 I&N Dec. 450, 451 (BIA 1987). Per Matter of Estime, "[i]n determining what is 'good and sufficient cause' for the issuance of a notice of intention to revoke, we ask whether the evidence of record at the time the notice was issued, if unexplained and unrebutted, would have warranted a denial based on the petitioner's failure to meet his or her burden of proof." Id.

II. ANALYSIS

The issue on appeal is whether the Director properly revoked the petition under section 205 of the Act.

The instant petition was approved in November 2017. However, in March 2020, the Director issued a NOIR. In the NOIR, the Director pointed out various inconsistencies in the Beneficiary's employment history on various forms including his nonimmigrant visa application; labor certification application; Form I-485, Application to Adjust Status; and the Form G-325A, Biographic Information. The Director stated that these inconsistencies appeared to be willful misrepresentation and the labor certification may be invalidated based upon a finding of fraud and misrepresentation of a material fact. The Director further noted that the record did not establish that: the Beneficiary possessed the minimum education and experience as required by the labor certification application on the priority date;[1] the Petitioner had the ability to pay beginning on the priority date and continuing until the time the Beneficiary becomes a permanent resident; the Petitioner had a bona fide job offer; and the Form I-140 was properly filed.

The Petitioner did not respond to the NOIR, and the Director revoked the petition. In the revocation decision, the Director repeated the same statements above and concluded that the record did not establish that: the Beneficiary possessed the minimum education and experience requirement listed on the labor certification application; the Petitioner had the ability to pay the required wage; the Petitioner had a bona fide job offer; and the Form I-140 was properly filed. The Director also concluded that both the Petitioner and the Beneficiary made material misrepresentation in these proceedings.

On appeal, the Petitioner states that due to the global pandemic, the NOIR was not received timely and therefore "an answer to such an intent was never completed." The Petitioner now submits "all requested documentation" and contests the Director's conclusions in the revocation decision.

[1] The "priority date" of an employment-based immigrant petition is the date the underlying labor certification application is filed with the DOL. See 8 C.F.R. § 204.5(d).

The decision to revoke the approval of a petition will be affirmed, notwithstanding the submission of evidence on appeal, when a petitioner fails to offer a timely explanation or rebuttal to a properly issued notice of intention to revoke. See Matter of Estime, 19 I&N Dec. at 452. Here, we conclude that the Director issued the NOIR in this case for good and sufficient cause but the Petitioner did not respond. On appeal, the Petitioner asserts that the NOIR was not received timely. However, the Petitioner does not corroborate its assertion. A search of USCIS systems indicates that the NOIR was sent to the address of record and it was not returned as undelivered. However, even if the NOIR was not received timely, we note that the Petitioner had reasonable time to respond to the NOIR. The NOIR was issued on March 25, 2020, and under USCIS COVID-19 flexibilities policy, the Petitioner was given additional 60 days after the due date to respond to the NOIR. But the Petitioner did not respond, and the Director revoked the petition on August 11, 2020. On appeal, the Petitioner does not sufficiently explain why it did not respond other than that the NOIR was not received timely and the response was "never completed." Here, we conclude that the NOIR meets the requirements under 8 C.F.R. § 205.2(b) and (c), but the Petitioner did not respond to the NOIR after given a reasonable opportunity to do so. Accordingly, we will affirm the Director's decision to revoke the petition and dismiss the appeal.

ORDER: The appeal is dismissed.