U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23094190

Date: NOV. 10, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner seeks to employ the Beneficiary as a churrasqueiro chef. It requests classification of the Beneficiary under the third-preference immigrant category as a skilled worker. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based, "EB-3" category allows a U.S. business to sponsor a foreign national for lawful permanent resident status based on a job offer requiring at least two years of training or experience.

The petition was initially approved, but the Director of the Texas Service Center subsequently revoked the petition's approval.[1] The Director concluded the Petitioner had not established that the Beneficiary qualified for the position at the time of filing. The Director also determined that the Petitioner submitted "a fraudulent work experience letter certifying [the Beneficiary's] work history listed on ETA Form 9089 (Section H) in order to obtain immigration benefits." The Director dismissed the Petitioner's subsequent motion to reconsider solely because it was not accompanied by a statement about whether or not the unfavorable decision has been the subject of any judicial proceeding. *See* 8 C.F.R. § 103.5(a)(1)(iii)(C).[2]

The Petitioner has the 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 review, we will withdraw the Director's latest decision and remand the matter for issuance of a new decision.

[1] 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).

[2] The required statement on judicial proceedings under 8 C.F.R. § 103.5(a)(1)(iii)(C) is a procedural rule that helps U.S. Citizenship and Immigration Services identify those cases involving judicial proceedings so they can be held in abeyance pending the outcome of litigation involving the originally filed petition. *See, e.g.* Memorandum from Richard E. Norton, Assoc. Comm'r for Examinations, Immigration and Naturalization Service, *Adjudication of Petitions and Applications which are in Litigation or Pending Appeal* (Feb. 8, 1989).

The Director's decision dismissing the motion to reconsider did not properly consider the Petitioner's arguments that the Beneficiary meets the experience requirements for the intended classification, that the information relating to the Beneficiary's job history was true and correct rather than contradictory, that the Director's notice of revocation disregarded rebuttal evidence, and that the Director erred as a matter of law in concluding that the record supported a finding of fraud or willful misrepresentation of a material fact.

Accordingly, we will withdraw the Director's latest decision and remand the matter for a new decision addressing the merits of the Petitioner's motion to reconsider.

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