U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25427026

Date: FEB. 7, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner, a medical center, seeks to employ the Beneficiary as a registered nurse. It requests her classification as a skilled worker under the third-preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This category allows a U.S. business to sponsor a noncitizen with at least two years of training or experience for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner provided proper notice of the filing of a labor certification (Notice). The matter is now before us on appeal. 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 dismiss the appeal.

A Schedule A occupation is an occupation codified at 20 C.F.R. § 656.5(a) for which the U.S. Department of Labor (DOL) has determined that there are not sufficient U.S. workers who are able, willing, qualified, and available and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of noncitizens in such occupations. The current list of Schedule A occupations includes professional nurses and physical therapists. *Id.*

Petitions for Schedule A occupations do not require a petitioner to test the labor market and obtain a certified labor certification from the DOL prior to filing the petition with U.S. Citizenship and Immigration Services (USCIS). Instead, the petition is filed directly with USCIS with a duplicate uncertified labor certification. *See* 8 C.F.R. § 204.5(a)(2); *see also* 20 C.F.R. § 656.15. If USCIS approves the petition, the noncitizen applies 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.

The Director concluded that the Petitioner did not provide proper Notice. Specifically, the Director determined that the Petitioner's Notice incorrectly listed the Chicago National Processing Center

instead of the Atlanta National Processing Center. Because the Notice contained the erroneous Certifying Officer, the Director denied the petition.

On appeal, the Petitioner contends "that the inclusion of a correct Certifying Officer address, in this case one that handles similar correspondences to the Atlanta Processing Center but for non-immigration petitions, merits a functional equivalent finding and compelling case for relief from the regulatory requirement." The regulations, however, do not permit "a functional equivalent finding" thereby allowing a petitioner to include an incorrect Certifying Officer in the Notice. In fact, the regulation at 20 C.F.R. § 656.10(d)(3)(iii) requires the Petitioner to "[p]rovide the address of the appropriate Certifying Officer" for the purpose so that "any person may provide documentary evidence bearing on application to the Certifying Officer of the [DOL]." 20 C.F.R. § 656.10(d)(3)(ii).[1] Since the Chicago National Processing Center was not the appropriate Certifying Officer, the Petitioner's Notice did not comply with the regulation at 20 C.F.R. § 656.10(d)(3)(iii).

The Petitioner also claims that the Director's "failure to issue a Request for Evidence [RFE] prior to issuing a denial was not reasonable." The regulation at 8 C.F.R. § 103.2(b)(8)(i) reflects that if the record establishes ineligibility, the benefit request will be denied on that basis.[2] Here, it would have served no meaningful purpose to issue an RFE to correct the Certifying Officer information because the Notice must be provided between 30 and 180 days before filing the application. 20 C.F.R. § 656.10(d)(d)(iv). Thus, a corrected Notice would have been offered after filing the application; and therefore, would not have complied with this regulatory requirement. In addition, a petitioner must establish eligibility at the time of filing the benefit request. 8 C.F.R § 103.2(b)(1).

For the reasons discussed above, the Petitioner did not provide proper Notice, and the Director correctly denied the petition.

ORDER: The appeal is dismissed.

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[1] *See also* 6 *USCIS Policy Manual* E.7(D)(3), https://www.uscis.gov/policymanual (instructing that a notice to the employees must also state that any person may provide documentary evidence bearing on the Schedule A labor certification application to the appropriate DOL Certifying Officer holding jurisdiction over the location where the beneficiary would be physically working, and the notice must also provide the address of the appropriate Certifying Officer).

[2] Moreover, the regulation at 8 C.F.R. § 103.2(b)(8)(ii) permits USCIS in its discretion to deny the benefit request for lack of initial evidence or for ineligibility. *See also* 1 *USCIS Policy Manual*, *supra*, at E.6(F) (providing that USCIS has the discretion to issue an RFE, to issue a denial without first issuing an RFE, and to not issue an RFE if it is determined that the evidence already submitted establishes ineligibility for the benefit request).