



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 25679465

Date: JAN. 12, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Other Worker

The Petitioner, describing itself as a manufacturer of zinc plating and electro-coated paint, seeks to employ the Beneficiary as a factory worker. It requests classification of the Beneficiary as an “other worker” under the third preference immigrant classification. Immigration and Nationality Act (Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). This employment-based “EB-3” immigrant classification allows a U.S. employer to sponsor a noncitizen for lawful permanent resident status to work in a position performing unskilled labor that requires less than two years of training or experience and is not of a temporary or seasonal nature. The Director of the Texas Service Center acknowledged the receipt of the Petitioner’s request to withdraw the petition and terminated the petition. The matter is now before us on appeal.

The applicable regulations state that a petitioner may withdraw a benefit request at any time until a decision is issued by U.S. Citizenship and Immigration Services (USCIS), but that such a withdrawal may not be retracted. 8 C.F.R. § 103.2(b)(6). In this matter, the Director interpreted the Petitioner’s written communication as an intent to withdraw the petition and the regulation prohibits a retraction. *Id.* The Petitioner claims on appeal that it did not request the withdrawal of the petition and asserts that the Director erroneously terminated the processing of the petition.

While we acknowledge the Petitioner’s claims, the Director’s written acknowledgement of the Petitioner’s withdrawal request is not a denial or other decision on the merits of the case, and, unlike an unfavorable decision, is not appealable under 8 C.F.R. § 103.3(a)(1)(ii). Further, the regulation at 8 C.F.R. § 103.2(b)(15) states that “USCIS acknowledgement of a withdrawal may not be appealed.” Since we do not have jurisdiction in this matter, the appeal must be rejected as improperly filed.

Further, even if the Director’s acknowledgement of the Petitioner’s withdrawal request could be considered an appealable decision under 8 C.F.R. § 103.3(a)(1)(ii), the Petitioner did not timely file its Form I-290B, Notice of Appeal or Motion. An appeal of an unfavorable decision must be filed within 33 calendar days of the date it was mailed. 8 C.F.R. §§ 103.3(a)(2)(i) and 103.8(b). Because of flexibilities implemented due to the COVID-19 pandemic, we may consider a Form I-290B filed within 63 calendar days of an unfavorable decision issued between March 1, 2020, and October 31, 2021.

The Director’s written acknowledgement of the withdrawal request was mailed to the Petitioner on

April 19, 2021, and the Form I-290B was received at the designated filing location 553 days later, on October 24, 2022. Therefore, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(*I*) requires the rejection of an untimely appeal as improperly filed.

**ORDER:**      The appeal is rejected.