U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26582709

Date: AUG. 17, 2023

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (Religious Worker – R-1)

The Petitioner, a religious organization, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as a minister. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). This nonimmigrant classification allows non-profit religious organizations, or their affiliates, to temporarily employ noncitizens as ministers, in religious vocations, or in other religious occupations in the United States.

The Director of the California Service Center revoked the petition, concluding that the Beneficiary exceeded the five-year limit under the R-1 classification pursuant to 8 C.F.R. § 214.2(r)(6). 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

The Director initially denied the instant petition, finding that the Beneficiary exceeded the maximum five years in R-1 status. However, the case was subsequently reopened and approved on January 20, 2022. After determining that the petition was erroneously approved, the Director sent a notice of intent to revoke (NOIR), and the Petitioner responded to NOIR within 30 days. On December 22, 2022, the Director revoked the previously approved petition, concluding that the Beneficiary met the maximum statutory limit of five years in R-1 status. The Director further stated that the Petitioner can appeal "to the Administrative Appeals Office (AAO) by filing a Notice of Appeal or Motion (Form I-290B) within 30 days (33 days if by mail) of the date of this decision." The Petitioner then filed this appeal with our office on January 25, 2023.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

In addition, the regulation at 8 C.F.R. § 214.2(r)(18)(i) states that a director may revoke the approval of a petition at any time, even after the expiration of the petition. The approval of an R classification petition may be revoked on notice if the approval violated 8 C.F.R. § 214.2(r) or involved gross error. 8 C.F.R. 214.2(r)(18)(iii)(A)(5). To properly revoke the approval of a petition, a director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(r)(18)(iii)(B).

Here, upon realization that the petition was approved in violation of 8 C.F.R. § 214.2(r), the Director adequately notified the Petitioner of the reasons for revocation and afforded the Petitioner 30 days to respond.

However, in the revocation decision, the Director improperly advised the Petitioner that it had 30 days in which to file the appeal. The regulation at 8 C.F.R. § 205.2(d) provides the petitioner a period of only 15 days within which to submit an appeal from a notice of revocation of approval of a petition. The regulation is binding on U.S. Citizenship and Immigration Services (USCIS) employees in their administration of the Act, and we do not have the authority to extend that filing period. *See, e.g., Panhandle Eastern Pipe Line Co. v. Federal Energy Regulatory Commission*, 613 F.2d 1120 (C.A.D.C., 1979) (an agency is bound by its own regulations); *Reuters Ltd. v. F.C.C.*, 781 F.2d 946, (C.A.D.C., 1986) (an agency must adhere to its own rules and regulations; ad hoc departures from those rules, even to achieve laudable aims, cannot be sanctioned).

As the Director incorrectly advised the Petitioner that it had 30 days to appeal, we will remand the decision to the Director for an issuance of a new decision allowing the Petitioner a period of 15 days to appeal, pursuant to 8 C.F.R. § 205.2(d).

In the new decision, the Director should also address the Petitioner's claims raised on appeal, that the Beneficiary did not work continuously in R-1 status and did not exceed the five-year limit under 8 C.F.R. § 214.2(r)(6). Specifically, the Petitioner claims that the Beneficiary did not work in R-1 status beginning August 2016 as his R-1 petition expired in July 2016. The Petitioner explains that the Beneficiary was in an alternate immigration status from September 2016 until a new R-1 petition was filed for him.

Based on the reasons above, the Director's decision is withdrawn, and the matter is remanded for a new decision.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis, which, if adverse to the Petitioner, shall be certified to us for review.