U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25610092

Date: FEB. 16, 2023

Appeal of California Service Center Decision

Form I-129, Application for Change of Status (E-2 Treaty Investor)

The Applicant seeks to employ the noncitizen in the United States as its chef under the E-2 nonimmigrant classification for treaty investors. *See* section 101(a)(15)(E)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(E)(ii); 8 C.F.R. § 214.2(e). In accordance with the regulations, the application for a change of status was filed on Form I-129, Petition for a Nonimmigrant Worker. *See* 8 C.F.R. §§ 214.1(c)(1), 214.2(e)(20) and (21).

The Director of the California Service Center denied the application. The Applicant appealed the decision to the Administrative Appeals Office (AAO). We will reject the appeal based on our lack of jurisdiction.

The Beneficiary was admitted to the United States as a nonimmigrant visitor under the Visa Waiver Pilot Program (VWPP). Section 217 of the Act, 8 U.S.C. § 1187. Noncitizens who are admitted to the United States under the provisions of the VWPP are not eligible to change status. Section 248(a)(4) of the Act, 8 U.S.C. § 1258(a)(4); 8 C.F.R. § 248.2(a)(6). The Director denied the application for this reason, and there is no appeal from the denial of a change of status application. 8 C.F.R. § 248.3(g). Thus, the appeal will be rejected.

Further, although an application for E-2 Treaty Investor status is made on Form I-129 and E Supplement, there is no petition requirement and no petition determination that may be appealed. When it published the Final Rule governing the nonimmigrant classification, the Immigration and Naturalization Service (now U.S. Citizenship and Immigration Services) noted:

> [U]nder section 103 of the Act, the service has exclusive jurisdiction to adjudicate applications for admission to this country, as well as applications for change of nonimmigrant status to, or extensions of stay in, E nonimmigrant classification. In this regard, *it should be noted that, unlike other employment-driven classifications, E nonimmigrant visa classification is not conferred by means of a petition, but instead by an application*.

62 Fed. Reg. 48138 (Sept. 12, 1997) (emphasis added).

While the AAO has appellate jurisdiction over most employment-based nonimmigrant visa petitions filed on Form I-129, the application for E nonimmigrant classification is an exception. Our appellate jurisdiction over the E nonimmigrant classification is limited to applications filed under 8 C.F.R. § 214.2(e)(23), which provides for special procedures for classifying foreign investors in the Commonwealth of the Northern Mariana Islands (CNMI) as E-2 nonimmigrant treaty investors. The regulation specifically authorizes these employers to appeal denied E-2 CNMI applications to the AAO. *See* 8 C.F.R. § 214.2(e)(23)(ix).

With respect to all other decisions in Form I-129 or I-539 extension proceedings, the regulation at 8 C.F.R. § 214.1(c)(5) states: "There is no appeal from the denial of an application for extension of stay filed on Form I-129 or I-539." *See also* 8 C.F.R. § 248.3(g) (providing no appeal for denied change of status applications).

Accordingly, the appeal will be rejected.

ORDER: The appeal is rejected.