



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

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

In Re: 21048421

Date: APR. 5, 2022

Appeal of California Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

The Petitioner seeks to temporarily employ the Beneficiary under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both: (a) the theoretical and practical application of a body of highly specialized knowledge; and (b) the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director of the California Service Center approved the H-1B petition but revoked it, citing to 8 C.F.R. § 103.2(a)(7)(ii)(D), because the Petitioner's financial institution did not honor the checks the Petitioner used to pay the petition's filing fees. On appeal, the Petitioner asserts that the Director erred in revoking the H-1B petition's approval.

While we conduct *de novo* review on appeal, we conclude that a remand is warranted in this case for two independent reasons.

First, the Petitioner has put forth compelling arguments that warrant review by a first-line adjudicator. The Petitioner argues, and provides credible documentation to establish, that their financial institution reversed payment not because of insufficient funds, or other action caused by the Petitioner, but rather because the bank flagged the Petitioner's checks in its check fraud prevention system. The Petitioner's checks were initially honored by their bank, however because of the bank's check fraud prevention system, the bank reversed the payments. As noted in a letter dated June 29, 2021, which the Petitioner provided in response to the Director's notice of intent to revoke (NOIR) the approved H-1B petition, the bank acknowledged the reason for reversing the honored checks, explained that the Petitioner had sufficient funds in their account, and requested that USCIS resubmit the returned checks. The Director's decision does not appear to have considered this document or any other evidence and arguments submitted by the Petitioner in response to the NOIR. Thus, a first-line adjudication of these arguments and evidence should be conducted.

Second, and regardless of whether the Director finds the Petitioner's arguments and evidence persuasive, the revocation decision did not follow proper revocation procedures. Rather than citing to one of the revocation-on-notice criteria enumerated at 8 C.F.R. § 214.2(h)(11)(iii)(A)(1)-(5) as the

basis for revocation, the Director cites to 8 C.F.R. § 103.2(a)(7)(ii)(D). However, pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A), an H-1B petition's approval may only be revoked on notice for one of the following reasons:

- (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or
- (2) The statement of facts contained in the petition or on the application for a temporary labor certification was not true and correct, inaccurate, fraudulent, or misrepresented a material fact; or
- (3) The petitioner violated terms and conditions of the approved petition; or
- (4) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or
- (5) The approval of the petition violated paragraph (h) of this section or involved gross error.

The Director's NOIR and decision did not cite to any of the above subsections of 8 C.F.R. § 214.2(h)(11)(iii)(A) and instead erred by citing to 8 C.F.R. § 103.2(a)(7)(ii)(D) as the basis for revocation. We observe that if the Director believes the failure to reject the filing in accordance with 8 C.F.R. § 103.2(a)(7)(ii)(D) led to the petition being approved in error, then the fifth revocation-ground enumerated at 8 C.F.R. § 214.2(h)(11)(iii)(A)(5) might serve as a valid basis upon which to revoke its approval.

Accordingly, and for the above two reasons, we are withdrawing the Director's decision to revoke the approved petition, and remanding the matter for entry of a new decision.

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