



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

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

In Re: 23244306

Date: AUG. 15, 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.

Though the Director of the California Service Center initially approved the H-1B petition, she revoked its approval when the Petitioner's financial institution did not honor the checks it submitted to pay the petition's filing fees. On appeal, the Petitioner submits a brief, requests that it be permitted to resubmit payment, and contends that the petition's approval should be reinstated.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.<sup>1</sup>

## I. LEGAL FRAMEWORK

The regulation at 8 C.F.R. § 103.2(a)(7)(ii) states four conditions under which U.S. Citizenship and Immigration Services (USCIS) will reject a benefit request, including when a filer's payment is returned as specified in subsection (D):

Submitted with the correct fee(s). If a check or other financial instrument used to pay a fee is returned as unpayable because of insufficient funds, USCIS will resubmit the payment to the remitter institution one time. If the instrument used to pay a fee is returned as unpayable a second time, the filing may be rejected. Financial instruments

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<sup>1</sup> We withdrew the Director's decision and remanded the matter for further action on April 5, 2022. After further review, we reopened the matter on service motion on June 14, 2022 and, pursuant to 8 C.F.R. § 103.5(a)(5)(ii), provided the Petitioner with a 33-day period during which to submit a brief and/or additional evidence if it so chose (it chose not to). Today's decision takes the place of our April 5, 2022 decision.

returned as unpayable for a reason other than insufficient funds will not be redeposited. If a check or other financial instrument used to pay a fee is dated more than one year before the request is received, the payment and request may be rejected.

On a related note, 8 C.F.R. § 106.1(c) states the following:

If a remittance in payment of a fee or any other matter is not honored by the bank or financial institution on which it is drawn:

- (1) The provisions of 8 C.F.R. § 103.2(a)(7)(ii) apply, no receipt will be issued, and if a receipt was issued, it is void and the benefit request loses its receipt date; and
- (2) If the benefit request was approved, the approval may be revoked upon notice. If the approved benefit request requires multiple fees, this provision will apply if any fee submitted is not honored. Other fees that were paid for a benefit request that is revoked under this provision will be retained and not refunded. A revocation of an approval because the fee submitted is not honored may be appealed to the USCIS Administrative Appeals Office, in accordance with 8 C.F.R. § 103.3 and the applicable form instructions.

When a notice of intent to revoke (NOIR) a petition's approval is issued in accordance with 8 C.F.R. § 106.1(c)(2), 1 *USCIS Policy Manual* B.6(B), <https://www.uscis.gov/policymanual>, "Response to a NOIR," offers additional guidance. In relevant part, that provision states that "[t]o sufficiently respond to a NOIR, the requestor must demonstrate that the payment was honored or that it was rejected by USCIS by mistake."

## II. ANALYSIS

The Petitioner filed the petition on May 20, 2021. Because the Petitioner requested Premium Processing service, the Director adjudicated the petition quickly, and it was approved on May 26, 2021. The Director subsequently issued a NOIR in accordance with 8 C.F.R. § 106.1(c)(2) and 1 *USCIS Policy Manual*, *supra*, at B.6(B), informing the Petitioner that the payment was not honored by the financial institution. In the NOIR, the Director notified the Petitioner that unless it submitted evidence that its payment had in fact been valid, and that it had in fact been honored by the financial institution, the petition's approval would be revoked. The Director also told the Petitioner that it may not submit any form of repayment.

In response, the Petitioner submitted a letter from its financial institution explaining that its checks "were returned on May 25, 2021, due to our check protection system." The Petitioner's financial institution stated that the Petitioner's account "did have sufficient funds at that time," and it recommended that the Petitioner "instruct [USCIS] to re-deposit the checks." The Petitioner also submitted other evidence demonstrating that it had sufficient funds to cover the checks at the time its financial institution returned them, including copies of bank statements showing its account balances and proof it was carrying overdraft protection.

The Petitioner was not, however, able to submit what the Director requested: evidence that the checks had in fact been honored by the financial institution. As indicated, the Petitioner instead explained *why* the checks had not been honored, and it requested that the agency redeposit them. As this response did not overcome the revocation grounds specified in the NOIR, the Director revoked the petition's approval.

On appeal, the Petitioner contends that the Director committed clear error. The Petitioner states that it was the financial institution's fault – rather than its own – that the payment was not honored, notes that it had sufficient funds to cover the checks, and takes issue with the Director's statement that the Petitioner cannot simply resubmit payment.

We are not persuaded by the Petitioner's arguments, and we conclude that the Director complied with USCIS law and policy. The Director properly issued the NOIR because the Petitioner's financial institution returned its checks, thereby triggering the provisions of 8 C.F.R. § 106.1(c)(2).<sup>2</sup> And the Director's statement that the Petitioner may not submit any form of repayment was similarly correct, as it reflected the agency's articulation of policy at 1 *USCIS Policy Manual*, *supra*, at B.6(B): “[t]o sufficiently respond to a NOIR, the requestor must demonstrate that the payment was honored or that it was rejected by USCIS by mistake.” Neither that subsection of the *USCIS Policy Manual*, nor 8 C.F.R. § 106.1(c), make any provision for resubmission of payment. While we acknowledge the Petitioner's argument that 8 C.F.R. § 103.2(a)(7)(ii)(D) directs the agency to resubmit payment to a remitting institution one time when payment is returned due to insufficient funds, that provision is inapplicable here because the Petitioner's financial institution honored payment initially. Moreover, the Petitioner has argued repeatedly that no shortage of funds was involved. These provisions of 8 C.F.R. § 103.2(a)(7)(ii)(D) therefore do not apply.

We acknowledge that the dishonored payments were not the fault of the Petitioner, do not appear to have involved any wrongdoing by the Petitioner, and we are sympathetic to the situation in which the Petitioner finds itself. However, the Petitioner has identified no error of law or policy on the part of the Director. Nor do we find any. To the contrary, we conclude that the Director properly applied USCIS law and policy. As a result, we will dismiss the appeal.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> We do acknowledge that the Director's NOIR did not cite 8 C.F.R. § 106.1(c). While unfortunate, since the Director complied with the requirements of that provision, we find it to have been harmless error.