



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

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

In Re: 23244392

Date: AUG. 15, 2022

Appeal of Nebraska 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 Nebraska Service Center initially approved the H-1B petition, she revoked its approval when the Petitioner's financial institution did not honor all the checks it submitted to pay the petition's filing fees. On appeal, the Petitioner submits a brief 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.¹

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 dishonored 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

¹ We withdrew the Director's decision and remanded the matter for further action on April 18, 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. The Petitioner submitted a brief and additional evidence, which we have reviewed. Today's decision takes the place of our April 18, 2022 decision.

returned as unpayable a second time, the filing may be rejected. Financial instruments 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 September 15, 2021. Because the Petitioner requested Premium Processing service, the Director adjudicated the petition quickly, and it was approved on September 17, 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 its financial institution had not honored its payment. 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 could not submit any form of repayment.

In response, the Petitioner submitted a letter from Counsel's paralegal stating that when she filed the petition, she requested Premium Processing service by mistake. The paralegal claimed that although she attempted to cancel the Premium Processing request, she was unable to do so since she did not yet have a receipt number. She explained that when she notified the Petitioner of what had happened, the Petitioner instructed her to cancel the check for Premium Processing. According to the Petitioner, the law firm cancelled the check on September 17, 2021 and "assumed that USCIS would simply process the petition under regular processing when it learned that the premium processing check had been

cancelled.” The Petitioner submitted a new check to cover the Premium Processing service it had received and asked that the Director cash it.

The Petitioner was not, however, able to submit what the Director had requested in the NOIR: evidence that the check had in fact been honored by the financial institution (because it was not). As indicated, the Petitioner instead explained *why* the check was not honored, and it submitted a new check and requested that the agency accept it. 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 petition’s approval should be reinstated. The Petitioner states that it made an innocent mistake and takes issue with the Director’s statement that it cannot simply submit a new check. It also requests that we weigh the negative impact of the revocation on the Petitioner and faults the Director for not doing so. The Petitioner also submits another check and requests that the agency cash it.

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 dishonored its check, thereby triggering the provisions of 8 C.F.R. § 106.1(c)(2).² 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. Nor are we persuaded by the earlier, implicit suggestion that the Director should have simply removed the petition from the Premium Processing queue: first, the Petitioner received the benefit of Premium Processing (the petition was approved two days after receipt), and second, the regulation at 8 C.F.R. § 106.1(c)(2) specifically states that when a benefit request requires multiple fees (as was the case here), its provisions apply if “any” submitted fee is not honored. *Id.*

We acknowledge that the dishonored payment does not appear to have involved ill intent on the part of 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.

² 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.