U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21383473

Date: SEP. 14, 2022

Appeal of California Service Center Decision

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

The Petitioner, a company conducting surveys on customer experience, seeks to temporarily employ the Beneficiary as a chief executive officer under the H-1B nonimmigrant classification for specialty occupations. 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 initially approved the petition. Upon review, the Director issued a notice of intent to revoke (NOIR) the approval. The Petitioner did not respond to the NOIR and the Director ultimately revoked the approval. On appeal, the Petitioner asserts that the Director erred in revoking the approval of the petition and submits additional evidence. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 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.

U.S. Citizenship and Immigration Services (USCIS) regulations provide for revocation on notice after providing the Petitioner with notice of its intent to revoke and allows an opportunity to respond. See 8 C.F.R. § 214.2(h)(11). The Director may revoke a petition at any time, even after the expiration of the petition. 8 C.F.R. § 214.2(h)(11)(i)(B). The regulation at 8 C.F.R. § 214.2(h)(11)(iii)(A) provides five grounds for revocation of an H-1B petition:

> (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.

After initially approving the petition, the Director issued a NOIR informing the Petitioner that the U.S. Department of State (DOS) returned the petition to USCIS for revocation after conducting property verification. In the NOIR, the Director notified the Petitioner of DOS's findings that the Petitioner does not operate a business at the location where it intends to employ the Beneficiary. The Director further explained that the Petitioner's statements were not true and correct and it misrepresented material facts in the petition and on the LCA; it violated the terms and conditions of the approved petition; it violated statutes or regulations; and it has not demonstrated that the position qualifies as a specialty occupation and the Beneficiary qualifies for the position offered. The NOIR also noted that the Petitioner may submit evidence, additional information, or arguments to support the petition. However, the Petitioner did not respond to the NOIR and the Director revoked the petition on the basis of findings discussed in the NOIR.

On appeal, the Petitioner asserts that the revocation of the petition was improper and contests the Director's findings, "namely that the statements in the H-1B petition were not true and correct." However, we cannot conclude that the Director's findings were incorrect and the decision to revoke the approval of the petition was improper because the Petitioner did not submit any rebuttal evidence to the Director to overcome the issues raised in the NOIR.[1] See generally Matter of Valdez, 27 I&N Dec. 496 (BIA 2018) (discussing section 212(a)(6)(C)(i) of the Act and the obligation to consider any rebuttal evidence). We also note that when a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, we need not accept evidence offered for the first time on appeal. See Matter of Soriano, 19 I&N Dec. 764 (BIA 1988); see also Matter of Obaigbena, 19 I&N Dec. 533 (BIA 1988). If the Petitioner wanted the submitted evidence to be considered, it should have provided the documents in response to the NOIR. Id.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden here, and the petition will remain revoked.

ORDER: The appeal is dismissed.

[1] We note that on appeal, the Petitioner states that it ceased its operations. The approval of any petition is immediately and automatically revoked if the petitioner goes out of business. See 8 C.F.R. § 214.2(h)(11)(ii).