



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

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

In Re: 20612747

Date: JUNE 23, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner seeks to employ the Beneficiary as a housekeeping supervisor. It requests classification of the Beneficiary under the third-preference, immigrant classification for skilled workers. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based, “EB-3” category allows a U.S. employer to sponsor a worker for lawful permanent resident status who is capable of performing skilled labor that requires at least two years education, training, or experience. After initially approving the Form I-140, Immigrant Petition for Alien Worker (petition), the Nebraska Service Center Director revoked the petition’s approval. The Director concluded the Petitioner did not demonstrate the *bona fides* of the job opportunity.

In these proceedings, it is the filing party’s burden to establish eligibility for the requested benefit 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 withdraw the Director’s decision and remand the matter for entry of a new decision consistent with the following analysis.

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as a skilled worker usually follows a three-step process. First, to permanently fill a position in the United States with a foreign worker, a prospective employer must obtain certification from the U.S. Department of Labor. See section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). If the Department of Labor approves a position, an employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). Section 204 of the Act, 8 U.S.C. § 1154. If USCIS grants a petition, a designated noncitizen may finally apply abroad for an immigrant visa or, if eligible, for adjustment of status in the United States. See section 245 of the Act, 8 U.S.C. § 1255.

“[A]t any time” before a beneficiary obtains lawful permanent residence, USCIS may revoke a petition’s approval for “good and sufficient cause.” Section 205 of the Act, 8 U.S.C. § 1155. USCIS may issue a notice of intent to revoke (NOIR) a petition’s approval if the unexplained and un rebutted record at the time of the notice’s issuance would have warranted the petition’s denial. *Matter of*

Estime, 19 I&N Dec. 450, 451 (BIA 1987). If a petitioner's NOIR response does not overcome the stated revocation grounds, USCIS may revoke a petition's approval. *Id.* at 451–52.

II. THE BONA FIDES OF THE JOB OPPORTUNITY

By itself, the Director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988); *Matter of Ma*, 22 I&N Dec. 67, 68–69 (BIA 1998). The approval of a visa petition does not vest any rights in the filing party of a petition, as approval of a visa petition is but a preliminary step in the visa application process. *Ho*, 19 I&N Dec. at 589.

The issue in this appeal relates to whether the Director properly revoked the petition approval. The Director approved the petition in 2009. After the Beneficiary attended a visa interview with a U.S. Department of State consular officer, USCIS performed two site visits in 2019 at the location listed on the petition and on the Department of State ETA Form 9089, Application for Permanent Employment Certification. Those site visits resulted in adverse information prompting the Director to issue a notice of intent to revoke (NOIR) the petition's approval in January of 2021.

Within the NOIR, the Director described the results of the site visit, including that the Petitioner did not employ any housekeepers on a full-time basis. The Director surmised with only temporary employees, it appeared "that there are no employees for the beneficiary to supervise and therefore there is no position for the beneficiary to fill." The Director further indicated it did "not appear that the job as described on the labor certificate exists." Finally, the Director indicated the Petitioner must demonstrate the ability to pay the Beneficiary's wage from the date it filed the petition until he attains lawful permanent resident status.

The Petitioner responded to the NOIR claiming its personnel were not listed on its payroll as they were working as independent contractors and two of those individuals were working full time, albeit not as employees. The Petitioner contested the allegation that it did not have personnel for the Beneficiary to supervise. The Director determined the NOIR response was not sufficient to overcome the grounds listed in the notice and it revoked the approval. Within the revocation, the Director indicated the Petitioner sufficiently addressed the ability to pay issue but revoked the petition's approval concluding the job offered was not a *bona fide* position that was available to U.S. workers. In making that determination, the Director relied on information contained within the materials the Petitioner provided in the NOIR response. The issue here is the Director relied on newly submitted information to revoke the approval, but they did not include those factual allegations in the NOIR. In other words, the Director revoked the petition's approval on adverse information that the Petitioner did not have an opportunity to address.

The Board of Immigration Appeals (the Board) determined that "[a] decision to revoke approval of a visa petition can only be grounded upon . . . the factual allegations specified in the notice of intention to revoke." *Matter of Arias*, 19 I&N Dec. 568, 570 (BIA 1988). Good and sufficient cause to revoke an approved petition means the evidence in the record at the time of the decision, including explanatory and rebuttal evidence, warrants a denial based on the petitioner's failure to sustain its burden of proof. *Matter of R. I. Ortega*, 28 I&N Dec. 9, 10 (BIA 2020) (citing *Estime*, 19 I&N Dec. at 451–52). A "notice of intention to revoke must include a specific statement of the facts and evidence underlying

the proposed action, and the petitioner must be given an opportunity to counter such facts and evidence.” *Arias*, 19 I&N Dec. at 570 n.4 (BIA 1988). “Where a notice of intention to revoke is [served and] . . . the petitioner is unaware and has not been advised of derogatory evidence, revocation of the visa petition cannot be sustained. *Estime*, 19 I&N Dec. at 452.

In the interest of due process and fairness, petitioners must be afforded the appropriate opportunity to advocate for and demonstrate eligibility. Including adverse reasons in a final revocation notice that were not detailed within the NOIR is not a proper method to revoke a petition’s approval. *Estime*, 19 I&N Dec. at 452; *R. I. Ortega*, 28 I&N Dec. at 10. In the same manner that filing parties must adhere to the process and procedural requirements specified in the Act and the regulations, so must we as government representatives. While the public “must turn square corners when they deal with the Government [citation omitted]. . . . it is also true [] that ‘the Government should turn square corners in dealing with the people.’” *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1909 (2020) (quoting *St. Regis Paper Co. v. United States*, 368 U.S. 208, 229 (1961) (Black, J., dissenting)).

Although the Petitioner did not demonstrate eligibility, the Director’s decision did not comply with the regulation pertaining to revocations.

III. CONCLUSION

The Director did not properly revoke the approved petition as it contained adverse elements not included in the NOIR. This did not afford the Petitioner the opportunity of addressing the issues presented in the final revocation. We will remand the matter to the Director to issue a new NOIR in accordance with the applicable provisions.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.