U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 1837732

Date: MAR. 21, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Other Worker

The Petitioner, a hospital, seeks to employ the Beneficiary as a registered nurse. It requests his classification under the third-preference, immigrant visa category for "other workers." Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii).

The Director of the Texas Service Center denied the petition. The Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See* section 291 of the Act, 8 U.S.C. § 1361 (discussing the burden of proof); *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010) (discussing the standard of proof).

Upon *de novo* review, we cannot determine the specific basis of the petition's denial. We will therefore 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 "other" or "unskilled" 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 (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). If DOL 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. Finally, if USCIS grants a petition, a designated noncitizen may 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.

DOL, however, has already determined that the United States lacks sufficient professional nurses and that employment of noncitizens in these "Schedule A" positions will not harm the wages or working conditions of U.S. workers in similar positions. 20 C.F.R. § 656.5, (a)(2). Thus, DOL authorizes USCIS to adjudicate Schedule A labor certification applications for nurses in immigrant visa petition proceedings. 20 C.F.R. § 656.15(a). Therefore, in this matter, USCIS rules not only on the immigrant visa petition, but also on its accompanying labor certification application. *See* 20 C.F.R. § 656.15(e)

(describing the labor certification determinations of USCIS in Schedule A proceedings as "conclusive and final").

II. THE DECISION

An administrative agency must state denial grounds "with such clarity as to be understandable." *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947). Also, USCIS officers must explain in writing "the specific reasons for denial." 8 C.F.R. § 103.3(a)(1)(i).

We cannot understand the specific basis of this petition's denial. The decision states: "The filing of a registered nurse under Section 203(b)(3)(iii) [of the Act for an] other worker is not appropriate. This classification does not support the requirements of a preference category for a Schedule A [filing]."

Near the decision's end, however, it states that "[t]he minimum job requirements do not meet the qualifications required of a [Schedule A] filing." The decision concludes:

> The petition filed under Section 203(b)(3)(iii) [of the Act for an] other worker does not me[e]t the requirements of [the Schedule A regulations]. As such the filing under Section 203(b)(3)(iii) [for an] other worker is not appropriate and does not meet the requirements of a Schedule A designation and is denied.

We cannot determine whether the Director found the petition insufficient to meet requirements of the requested immigrant visa category, the requested Schedule A designation, or both. Moreover, the decision does not explain the specific other worker/Schedule A requirements that are purportedly lacking.

For the foregoing reasons, we will withdraw the Director's decision and remand the matter. If the Director believes the petition lacks a legal basis for approval, he should issue a new decision explaining the specific reasons for the purported ineligibility. *See* 1 *USCIS Policy Manual* E.(6)(F). In contrast, if the Director believes the petition lacks initial evidence or requires additional evidence, the Director should issue an RFE or NOID. *Id.* In that event, upon timely receipt of a response, the Director should review the entire record and enter a new decision.

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