U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22650949

Date: FEB. 08, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner seeks to employ the Beneficiary as an alteration tailor. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. Immigration and Nationality Act section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based immigrant classification allows a U.S. employer to sponsor a foreign national for lawful permanent resident status to work in a position that requires at least two years of training or experience.

The Director of the Texas Service Center initially approved the petition, but later on March 30, 2021, revoked that approval.[1] The Director concluded the Petitioner failed to establish a bona fide offer of employment, failed to disclose a pre-existing family relationship with the Beneficiary on the labor certification, and willfully misrepresented a material fact by stating on the labor certificate that the proffered job was clearly open to U.S. workers. The Director dismissed the subsequent combined motion to reopen and reconsider solely because it was not accompanied by a statement about whether the unfavorable decision has been the subject of any judicial proceeding. See 8 C.F.R. § 103.5(a)(l)(iii)(C).[2] The matter is now before us on appeal, where we will consider the Petitioner's appeal as it relates to the Director's decision to deny the Petitioner's motion to reopen and reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. See Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will withdraw the Director's decision and remand the matter for issuance of a new decision.

[1] Section 205 of the Act, 8 U.S.C. § 1155, provides that the Secretary of Homeland Security may "for good and sufficient cause, revoke the approval of any petition." By regulation this revocation authority is delegated to any USCIS officer who is authorized to approve an immigrant visa petition "when the necessity for the revocation comes to the attention of [USCIS]." 8 C.F.R. § 205.2(a). USCIS must give the petitioner notice of its intent to revoke the prior approval of the petition and the opportunity to submit evidence in opposition thereto, before proceeding with written notice of revocation. See 8 C.F.R. § 205.2(b) and (c).

[2] The required statement on judicial proceedings under 8 C.F.R. § 103.5(a)(1)(iii)(C) is a procedural rule that helps U.S. Citizenship and Immigration Services identify those cases involving judicial proceedings so they can be held in abeyance pending the outcome of litigation involving the originally filed petition. See, e.g. Memorandum from Richard E. Norton, Assoc. Comm'r for Examinations, Immigration and Naturalization Service, Adjudication of Petitions and Applications which are in Litigation or Pending Appeal (Feb. 8, 1989).

The Director's decision dismissing the combined motion to reopen and reconsider did not properly consider the Petitioner's argument that the Director erred in its denial decision by not considering all the evidence in the record. The Petitioner argues that it does not have a pre-existing family relationship with the Beneficiary, the record establishes a bona fide offer of employment, and the record does not support that the Petitioner made a willful misrepresentation of a material fact by stating on the labor certificate that the proffered job was clearly open to U.S. workers.

Accordingly, we will withdraw the Director's latest decision and remand the matter for a new decision addressing the merits of the Petitioner's motion to reopen and reconsider.

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