



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

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

In Re: 21125483

Date: APR. 18, 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.

The Director of the Nebraska Service Center approved the H-1B petition but later revoked it, citing to 8 C.F.R. § 103.2(a)(7)(ii)(D), because the Petitioner's financial institution did not honor the checks the Petitioner used to pay the petition's filing fees. On appeal, the Petitioner asserts that the Director erred in revoking the H-1B petition's approval.

While we conduct *de novo* review on appeal, we conclude that a remand is warranted in this case because the revocation decision did not follow proper revocation procedures. Rather than citing to one of the revocation-on-notice criteria enumerated at 8 C.F.R. § 214.2(h)(11)(iii)(A)(1)-(5) as the basis for revocation, the Director cited to 8 C.F.R. § 103.2(a)(7)(ii)(D). However, pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A), an H-1B petition's approval may only be revoked on notice for one of the following reasons:

- (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.

The Director's NOIR and decision did not cite to any of the above subsections of 8 C.F.R. § 214.2(h)(11)(iii)(A) and instead erred by citing to 8 C.F.R. § 103.2(a)(7)(ii)(D) as the basis for revocation. We observe that if the Director believes the failure to reject the filing in accordance with 8 C.F.R. § 103.2(a)(7)(ii)(D) led to the petition being approved in error, then the fifth revocation-ground enumerated at 8 C.F.R. § 214.2(h)(11)(iii)(A)(5) might serve as a valid basis upon which to revoke its approval.

Accordingly, we are withdrawing the Director's decision to revoke the approved petition and remanding the matter for entry of a new decision.

ORDER: The decision of the Director is withdrawn.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