U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30748269

Date: APR. 17, 2024

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (H-2B)

The Petitioner, a construction business, seeks to employ the Beneficiaries as landscape laborers under the H-2B nonimmigrant classification for temporary nonagricultural services or labor. *See* Immigration and Nationality Act section 101(a)(15)(H)(ii)(b), 8 U.S.C. § 1101(a)(15)(H)(ii)(b). The H-2B program allows a qualified U.S. employer to bring certain noncitizens to the United States to fill temporary nonagricultural jobs.

The Director of the California Service Center revoked the approval of the petition, concluding that the Petitioner violated terms and conditions of the approved petition and did not respond to a notice of intent to revoke (NOIR). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Under U.S. Citizenship and Immigration Service (USCIS) regulations, the approval of an H classification petition may be revoked on notice under five specific circumstances set forth at 8 C.F.R. § 214.2(h)(11)(iii)(A). In part, this regulation provides that a director shall send to the petitioner a notice of intent to revoke the petition if they determine that the petitioner violated terms and conditions of the approved petition. *See* 8 C.F.R. § 214.2(h)(11)(iii)(A)(*3*). To properly revoke the approval of a petition, a director must issue a notice of intent to revoke (NOIR) that contains a detailed statement of the grounds for the revocation and the time allowed for rebuttal. 8 C.F.R. § 214.2(h)(11)(iii)(B). A director may revoke the approval of a petition at any time, even after the expiration of the petition. 8 C.F.R. § 214.2(h)(11)(i)(B).

II. SIGNATURE ISSUE

As a threshold issue, we conclude that the appeal must be dismissed because the Petitioner did not personally sign the Form I-290B, Notice of Appeal or Motion. USCIS requires a valid signature on

applications, petitions, requests, and certain other documents filed with USCIS, including the Form I-290B and Form G-28 (Notice of Entry of Appearance as Attorney or Representative). *See* 8 C.F.R. § 103.2(a)(2) and (3). The regulations allow a parent or legal guardian to sign for a person who is under the age of 14 and a legal guardian may sign for a person who is proven to be mentally incompetent. *See* 8 C.F.R. § 103.2(a)(2). In all other cases, USCIS does not accept a signature made by one person "on behalf of" or "for" another person.

Here, both the Form G-28 and Form I-290B indicate that the Petitioner's owner's name was signed on his behalf by another person. Specifically, the owner's name is handwritten and annotated with the initials of the attorney who submitted the appeal, the initials of another unidentified person, and the words "with authorization."

Where, as here, USCIS accepts a request for adjudication as properly filed and later determines that it has a deficient signature, the request must be denied. USCIS does not provide an opportunity for the affected party to correct or cure a deficient signature by submitting a new Form I-290B and signature after receipt. *See generally*, 1 *USCIS Policy Manual* B.2, https://www.uscis.gov/policy-manual ("Signatures"). Accordingly, we will dismiss the appeal.

III. REVOCATION OF APPROVED H-2B PETITION

The remaining issue to be determined is whether the Director properly revoked the petition's approval on notice under the provision at 8 C.F.R. § 214.2(h)(11)(iii)(A)(*3*). Even assuming arguendo that the Petitioner had personally signed the Form I-290B as required, the Petitioner's arguments on appeal are insufficient to overcome the Director's revocation decision.

The record reflects that the Director initially approved the petition, authorizing the Petitioner's temporary employment of 20 unnamed Beneficiaries for the period May 10, 2023, until December 31, 2023. The Petitioner filed the petition under the provision at 8 C.F.R. § 214.2(h)(6)(xiii), which sets forth special requirements for supplemental H-2B cap allocations under Public Laws 117-103 and 117-180. To file its petition with USCIS under this provision, the Petitioner was required to submit a U.S. Department of Labor (DOL) attestation on Form ETA-9142-B-CAA-7, attesting, in part, that: (1) its business is suffering irreparable harm or will suffer impending irreparable harm without the ability to employ the requested H-2B workers; (2) all requested beneficiaries will be returning H-2B workers; (3) it will maintain and provide documentary evidence supporting these facts to the Department of Homeland Security (DHS) or DOL upon request; and (4) it will fully cooperate with any compliance review, evaluation, verification, or inspection conducted by DHS as a condition for the approval of the petition. *See* 8 C.F.R. § 214.2(h)(6)(xiii)(B)(*2*).

Further, by signing the Form I-129, Petition for a Nonimmigrant Worker, a petitioner acknowledges that any evidence submitted in support of its petition may be verified by USCIS through any means determined appropriate by USCIS, including but not limited to, on-site compliance reviews. The instructions to Form I-129 further explain that DHS has the authority to verify any information a petition submits to establish eligibility for the immigration benefit at any time, and that its legal authority to verify this information is provided by 8 U.S.C. sections 1103, 1154, 1155 and 1184, and 8 C.F.R. §§ 103, 204, 205 and 214. Agency verification methods may include but are not limited to:

review of public records and information; contact via written correspondence, the Internet, facsimile or other electronic transmission or telephone; unannounced physical site inspections; and interviews.

In a notice of intent to revoke issued on August 2, 2023, the Director informed the Petitioner that USCIS had made multiple unsuccessful attempts to contact its owner using the telephone number and email address provided on the Form I-129. The Director further advised the Petitioner that USCIS contacted the Petitioner's owner to inform him that this petition was selected for compliance review and to request additional documentation to demonstrate that the Petitioner and each Beneficiary met all requirements and were eligible for the requested benefit at the time the petition was filed, as well as compliant with additional requirements applicable to H-2B petitions filed under the provisions of 8 C.F.R. § 214.2(h)(6)(xiii). As such, the Director advised the Petitioner of USCIS' intent to revoke due to its lack of cooperation with attempts to conduct the compliance review, noting that the approval of the petition was conditioned, in part, on the Petitioner's attestation that it would fully comply with any such post-adjudication review by the Agency.

The NOIR included a list of the evidence the Petitioner could submit to establish its compliance with 8 C.F.R. § 214.2(h)(5)(xiii)(B), including evidence to establish that, at the time of filing, the business was suffering irreparable harm or suffering impending irreparable harm without the ability to employ all the H-2B workers requested, and evidence demonstrating that each of the workers requested under the petition were returning H-2B workers. The NOIR afforded the Petitioner 33 days to submit a response. The Director revoked the approval of the petition following the expiration of this 33-day period, emphasizing that USCIS had received no response.

On appeal, the Petitioner asserts that it "did not receive any communication from USCIS regarding the selection of the petition for compliance review, nor did it receive any notice(s) of intent to revoke." The Petitioner emphasizes that considering these facts, USCIS did not have a reasonable basis to revoke the approval of the petition.

The record reflects that the Director complied with the applicable regulations for service of USCIS notices and decisions by mailing the NOIR and revocation decision to the Petitioner at its last known address. *See* 8 C.F.R. §§ 103.8(a)(1) and 214(h)(11)(3)(A). The Petitioner indicates he received the revocation decision, but not the NOIR mailed to the same address. We note that the NOIR was not returned to USCIS as undeliverable.

The Petitioner suggests that USCIS regulations governing service by mail resemble the common law "Mailbox Rule," because the Agency deems a notice to be served so long as it is properly addressed and physically mailed. It maintains that "before the Mailbox Rule can be legally applied to [the Petitioner] USCIS must lay the foundation for invoking the rule and the evidence in support must be in the record." The Petitioner asserts that "there is no sworn testimony about the mailing process from an individual with personal knowledge of the alleged mailing of [the NOIR]," and implies that USCIS was required to provide such testimony to the Petitioner for analysis. The Petitioner does not establish, however, that the "Mailbox Rule" applies to proceedings before USCIS, which has superseding regulations governing dates of service and receipt.

Therefore, contrary to the Petitioner's claims on appeal, service by mail under 8 C.F.R. § 103.8(a)(1), does not implicitly require that USCIS provide the affected party with "sworn testimony about the

mailing process." It is a well-established principle that "a presumption of regularity attaches to the actions of Government agencies" absent clear evidence to the contrary. *See U.S. Postal Serv. v. Gregory*, 534 U.S. 1, 10 (2001) (*citing United States v. Chem. Found.*, 272 U.S. 1, 14-15 (1926)). The record reflects that USCIS mailed the notice to the Petitioner's address of record on August 2, 2023.

The Petitioner further maintains that it is "irrational" for USCIS to conclude that the company received the NOIR and simply chose to ignore it, contending that "it is the kind of company that takes appropriate action when it receives a notice," as evidenced by its appeal of the revocation decision. The Petitioner, citing *Matsushita Elec. Indus. Co. v. Zenith Radion Corp.*, 475 U.S. 574, 593 (1986), asserts that "fact finders should not infer behavior when it is implausible or irrational." The Petitioner cites to a report published by the U.S. Postal Service which provides statistics on the substantial volume of mail that is either delayed or never delivered. The Petitioner continues:

> Given [the Petitioner's] non-response to the original notice and prompt response to the second notice and the 18% likelihood that USCIS' notice was not delivered even if properly mailed, the probability of non-delivery is very high. In light of these facts and the lack of foundation in the record, the due process clause does not permit USCIS to create or apply it. *Tot v. United States*, 319 U.S. 463, 468, 63. S.Ct. 1241 1245 (1943) ("But where the inference is so strained as not to have a reasonable relation to the circumstances of life as we know them, it is not competent for the legislature to create it as a rule governing the procedures of courts.")

However, even if the NOIR was not delivered, or its delivery was delayed, USCIS regulations do not require the agency to take any further action prior to issuing a revocation decision where a petitioner or applicant does not respond to a properly issued NOIR within the timeframe allowed. USCIS is not required to consider or reach a conclusion regarding a petitioner's rationale for not responding to a notice and the Director's decision does not include a determination that the Petitioner "chose to ignore" the NOIR.

Further, the Petitioner does not adequately address the fact that USCIS made multiple unsuccessful attempts to contact its owner using the email address and telephone addressed number provided on the Form I-129, prior to issuing the NOIR. As noted, the Petitioner simply states it received "no communication" regarding its selection for compliance review. However, based on "the presumption of regularity attache[d] to the actions of Government agencies," and absent clear evidence to the contrary, there is no basis to conclude that USCIS did not, in fact, contact the Petitioner at the telephone number and email address it provided, on multiple occasions, prior to concluding that the issuance of a NOIR was warranted. *See U.S. Postal Serv. v. Gregory*, 534 U.S. at 10.

Finally we acknowledge the Petitioner's suggestion that the regulations at 8 C.F.R. §§ 214.2(h)(11)(iii)(A) and 103.8(a)(1), which permit the revocation of an H classification petition approval on notice by mailing a NOIR to a Petitioner's last known address, do not include adequate due process protections. However, we cannot address arguments on the constitutionality of laws enacted by Congress or on regulations. *See, e.g.*, *Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992) (holding that the Immigration Judge and Board of Immigration Appeals lacked jurisdiction to rule upon the constitutionality of the Act and its implementing regulations); *Matter of Hernandez-Puente*,

20 I&N Dec. 335, 339 (BIA 1991) ("It is well settled that it is not within the province of this Board to pass on the validity of the statutes and regulations we administer.") (citations omitted).

Here, the record reflects the NOIR contained relevant facts, that, if unrebutted, support the Director's determination that the Petitioner violated terms and conditions of the approved petition. *See* 8 C.F.R. § 214.2(h)(11)(iii)(A)(*3*). Based on the information summarized in the NOIR and notice of revocation regarding USCIS' multiple unsuccessful attempts to contact the Petitioner to arrange a compliance review, the Director could not find it had fulfilled its obligation to fully cooperate with any compliance review, evaluation, verification, or inspection conducted by DHS. The Petitioner's cooperation in any such review by USCIS was a condition for the approval of the petition. *See* 8 C.F.R. § 214.2(h)(6)(xiii)(B)(*2*). Therefore, the issuance of the NOIR was warranted based on the circumstances present in this case.

In general, the Director's decision to revoke the approval of a petition will be affirmed if a petitioner fails to offer a timely explanation or rebuttal to a properly issued notice of intent to revoke. *Matter of Arias*, 19 I&N Dec. 568, 570 (BIA 1988). Here, the Petitioner did not submit a response to the Director's properly issued NOIR.

Accordingly, we will affirm the Director's decision to revoke the approval of the petition. The appeal will be dismissed.

ORDER: The appeal is dismissed.