



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

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

In Re: 02163361

Date: JUL. 28, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The petitioning church seeks to employ the Beneficiary as a pastor. The organization seeks his classification under the second-preference, immigrant category as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A).

After the filing's initial grant, the Acting Director of the Nebraska Service Center revoked the petition's approval and dismissed the Petitioner's following joint motions to reopen and reconsider. The Acting Director found insufficient evidence that a church-authorized signatory signed the petition and accompanying certification from the U.S. Department of Labor (DOL). Rather, the Acting Director found that prior counsel signed the documents, willfully misrepresenting himself as a church official.

On appeal, the Petitioner asserts that, consistent with general principles of agency law, the church authorized prior counsel to sign the immigration documents for it under a power of attorney (POA). Although current U.S. Citizenship and Immigration Services (USCIS) policy bars such POA signings for entities, the church contends that the policy does not apply because prior counsel signed the documents before it took effect.

The Petitioner must demonstrate eligibility for the benefit request by a preponderance of evidence. *See Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1989) (discussing the burden of proof in petition revocation proceedings); *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010) (discussing the standard of proof). Upon *de novo* review, we find that the Petitioner has not established prior counsel's authorization to sign the church's petition and labor certification, or the inapplicability of USCIS' current signature policy. We will therefore dismiss the appeal.¹

¹ A Form G-28, Notice of Entry of Appearance, signed by an attorney, accompanied the appeal. We found the form improperly executed under 8 C.F.R. § 292.4(a) and notified the attorney of the deficiency. As his response did not include a properly executed Form G-28, we do not recognize his appearance in this matter.

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as an advanced degree professional generally follows a three-step process. First, a prospective employer must obtain DOL certification that: (1) there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and (2) employment of a noncitizen in the position will not harm wages and working conditions of U.S. workers with similar jobs. *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5).

Second, an employer must submit an approved labor certification with an immigrant visa petition to USCIS. *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS determines whether a noncitizen beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(l).

Finally, if USCIS approves a petition, a beneficiary may apply for an immigrant visa abroad or, if eligible, “adjustment of status” in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

At any time before a beneficiary obtains lawful permanent resident status, USCIS may revoke a petition’s approval for “good and sufficient cause.” Section 205 of the Act, 8 U.S.C. § 1155. If supported by a record, a petition’s erroneous approval justifies its revocation. *Matter of Ho*, 19 I&N Dec. at 590.

USCIS properly issues a notice of intent to revoke (NOIR) a petition’s approval if the unexplained and un rebutted record at the time of the NOIR’s issuance would have warranted the petition’s denial. *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987). If a petitioner does not submit a NOIR response or the response does not overcome the stated revocation grounds, USCIS properly revokes the petition’s approval. *Id.* at 452.

II. THE SIGNATURES ON THE PETITION AND LABOR CERTIFICATION

Petitioners must sign their petitions. 8 C.F.R. § 103.2(a)(2). By signing petitions, signatories affirm their authority to sign the documents and their knowledge of the facts represented on them. 1 *USCIS Policy Manual* B(2)(C). Signatories also attest to the validity of the facts and claims on the documents, and USCIS may hold signatories accountable for fraud or material misrepresentations. *Id.* If filed by legal entities, petitions must bear marks of authorized signatories of the organizations, such as executive corporate officers. *Id.* at B(2)(C)(3). USCIS rejects improperly signed benefit requests or, upon later determining their inclusion of deficient signatures, denies them. *Id.* at (B)(2)(A).

Also, unless accompanied by applications for Schedule A applications or documentation of beneficiaries’ qualifications for shortage occupations, petitions for advanced degree professionals must include valid, individual labor certifications from DOL. 8 C.F.R. § 204.5(k)(4)(i). USCIS will not process petitions accompanied by labor certifications unless the employers signed the certifications. 20 C.F.R. § 656.17(a)(1).

The Petitioner’s Form I-140 and labor certification indicate their signings by the church’s senior pastor, who also serves as its chief executive officer. The Director’s NOIR, however, questions the signatures’ validity. A couple of years before the filings of the labor certification application and

petition, a USCIS representative visited the church, where the senior pastor verified his signature on a nonimmigrant visa petition for another beneficiary. That signature is in cursive writing and includes the senior pastor's middle initial. The NOIR notes that that signature and those on the immigrant petition and labor certification "vary greatly." The signatures on the Form I-140 and labor certification resemble printing and omit the senior pastor's middle initial. The noticeable difference between the marks casts doubt that the senior pastor signed the petition and labor certification as indicated on the forms. Without forensic analysis or other expert testimony, "obvious defects" in documents may support findings of invalidity. *Matter of O-M-O-*, 28 I&N Dec. 191, 194-95 (BIA 2021). The Director therefore issued the NOIR for good and sufficient cause.

The Petitioner's NOIR response included a written declaration, purportedly from the senior pastor, stating that he "executed the labor certification and Form I-140." But the church's later motion to reopen contained contradictory evidence. Declarations on motion in the name of the senior pastor and Beneficiary state that prior counsel never requested their signatures on the petition or labor certification application. Also, the declaration on motion in the Beneficiary's name states that prior counsel told him that an employee of counsel's office may have signed the petition in the senior pastor's name.

Further, the Petitioner's motion to reopen contained evidence of the senior pastor's filing of a disciplinary complaint against prior counsel. The complaint states the church's desire to employ the Beneficiary in the offered position. But the document alleges that prior counsel submitted the petition and labor certification with false signatures of the senior pastor.² Thus, the Petitioner's motion to reopen further indicates that the church's petition and labor certification lack authorized signatures.

On appeal, the Petitioner asserts that prior counsel signed the petition and labor certification in the senior pastor's name under a power of attorney that authorized counsel to act as the Petitioner's agent. The church notes that, although current USCIS policy bars the practice, the Agency previously allowed outside attorneys to sign petitions for employers under written powers of attorney. *See* USCIS Interim Policy Memorandum PM-602-0134, *Signatures on Paper Applications, Petitions, Requests, and Other Documents Filed with U.S. Citizenship and Immigration Services* 5-6 (June 7, 2016). The Director revoked the petition's approval before USCIS' current policy took effect in 2018. The Petitioner therefore argues that, under the Agency's prior policy, prior counsel validly signed the petition on the Petitioner's behalf. The senior pastor also stated that the church "gave power of attorney" to prior counsel in the petition and labor certification proceedings.

USCIS' prior signature policy, however, required agents to submit originals or copies of valid, written POAs each time the agents signed and filed benefit requests with USCIS. Interim Policy Memorandum PM-602-0134, *supra*, at 5-6. Neither prior counsel nor the Petitioner provided a valid POA that authorized counsel to act on the church's behalf. Thus, the Petitioner has not demonstrated that USCIS' prior policy allowed prior counsel to sign the petition and labor certification for the church.

² The evidence indicates that, as of December 2017, disciplinary officials were investigating the complaint. But the record lacks evidence of the investigation's result, nor could we find any in online public records. *See* The State Bar Court of Cal., "Smart Search," <https://apps.statebarcourt.ca.gov/dockets.aspx> (Jul. 22, 2022). Online records indicate that prior counsel continues to maintain an active law license without record of any disciplinary actions against him. *See* The State Bar of Cal., "Attorney Search," <https://apps.calbar.ca.gov/attorney/LicenseeSearch/QuickSearch> (Jul. 22, 2022).

Also, USCIS must generally apply the law in effect at the time the Agency renders a decision. *See, e.g., Bradley v. Richmond Sch. Bd.*, 416 U.S. 696, 711 (1974). Current USCIS policy bars a petitioning organization's signature pursuant to a POA and does not specifically limit the policy's application to signatures issued on or after the policy's effective date of March 17, 2018. *See USCIS Policy Memorandum PM-602-0134.1, Signatures on Paper Applications, Petitions, Requests, and Other Documents Filed with U.S. Citizenship and Immigration Services*, 1-2 (Feb. 15, 2018). The Petitioner also has not established that application of the current policy would unjustly prejudice the church. *See Bradley*, 416 U.S. at 711.

The Petitioner claims that it did not know of the false signatures on its petition and labor certification and intended to employ the Beneficiary in the offered position consistent with the documents' contents. Regardless of the church's intent, however, regulations required an authorized signature on the documents, and USCIS lacks authority to disregard the regulations.

The record does not demonstrate that a church-authorized person signed the petition or labor certification. We will therefore affirm the revocation of the petition's approval.

III. WILLFUL MISREPRESENTATION

The Director also found that, by signing the petition and labor certification in the name of the Petitioner's senior pastor, prior counsel willfully misrepresented a material fact. We will withdraw the Director's finding on this issue, and the invalidation of the labor certification.

Despite our withdrawal, however, the record contains misrepresentations that may warrant revocation of the petition's approval. USCIS can approve a petition only if "the facts stated in the petition are true." Section 204(b) of the Act. A petition incorporates all its supporting evidence, including a labor certification. 8 C.F.R. § 103.2(b)(1). Thus, if the facts stated in the petition or labor certification are untrue, USCIS cannot approve the petition.

As previously discussed, evidence indicates that, contrary to regulations and policy, prior counsel willfully signed the Petitioner's petition and labor certification in the name of the church's senior pastor without the organization's authorization. USCIS rejects or denies improperly signed benefit requests. 1 *USCIS Policy Manual* B(2)(A). Thus, unrebutted and unresolved, prior counsel's alleged misrepresentation of himself as the Petitioner's senior pastor would have warranted the petition's denial. *See Matter of Estime*, 19 Dec. at 451.

Also, although unaddressed by the Director, the record indicates that the labor certification application may misrepresent the Petitioner's receipt of payment in exchange for the application's submission. A labor certification employer cannot "seek or receive payment of any kind for any activity related to obtaining permanent labor certification, including payment of the employer's attorneys' fees." 20 C.F.R. § 656.12(b).

Part J.23 of the labor certification application asks: "Has the employer received payment of any kind for the submission of this application?" The application states: "No." The Petitioner, however, submitted a copy of a deposited check from October 2012 for \$2,000 to prior counsel. The check indicates its issuance by the Beneficiary on his personal account.

Prior counsel signed the Petitioner's labor certification, attesting to his preparation of the application. Also, the filing of a labor certification application precedes the filing of a petition, and the Petitioner's application was filed in April 2013. Thus, the Beneficiary's October 2012 check to prior counsel appears to pay the Petitioner's attorneys' fees for preparation of the labor certification application. Under 20 C.F.R. § 656.12(b), the application therefore appears to misrepresent the Petitioner's receipt of payment in exchange for the application's submission.

The Director did not notify the Petitioner of these additional, potential grounds of revocation. Thus, in any future filing in this matter, the Petitioner must demonstrate that prior counsel did not willfully sign the petition and labor certification in the name of the church's senior pastor with the church's authorization. The Petitioner must also establish that the Beneficiary's apparent payment to prior counsel did not relate to the labor certification application. The Petitioner should submit: updated information about the results of the disciplinary investigation of prior counsel; proof that the church notified counsel of the accusations against him; copies of any responses by counsel; and documentation regarding any agreement as to counsel's scope of representation. *See Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988) (establishing a framework for asserting and assessing claims of ineffective assistance of counsel).

IV. CONCLUSION

Contrary to regulations and USCIS policy, the Petitioner has not demonstrated that an authorized person signed its petition and labor certification. We will therefore affirm the revocation of the petition's approval.

ORDER: The appeal is dismissed.