



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

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

In Re: 01699565

Date: JUL. 29, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner operates a restaurant and seeks to permanently employ the Beneficiary as a cook. The company requests her classification under the third-preference, immigrant visa category as a skilled worker. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i).

After the filing's initial grant, the Acting Director of the Nebraska Service revoked the petition's approval. The Acting Director invalidated the accompanying certification from the U.S. Department of Labor (DOL), concluding that, on the certification application, the Petitioner willfully misrepresented material facts. On appeal, the Petitioner denies the alleged misrepresentations.

The Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988) (discussing the standard 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 Acting Director did not sufficiently explain the denial grounds. We will therefore withdraw the Acting 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 skilled worker 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 U.S. Citizenship and Immigration Services (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 DECISION

A director who revokes a petition’s approval “shall provide the petitioner . . . with a written notification of the decision that explains the specific reasons for the revocation.” 8 C.F.R. § 205.2(c).

Contrary to 8 C.F.R. § 205.2(c), the Acting Director’s written decision does not sufficiently explain the grounds for revoking the petition’s approval. The decision and the NOIR appear to allege multiple misrepresentations on the labor certification application, including those involving: a family relationship between the Beneficiary and the Petitioner’s president/sole shareholder; and the Beneficiary’s purported attempt to obtain lawful permanent residence “under false pretenses.” The decision and NOIR also allege that the Beneficiary’s principal laundered money and transported a noncitizen who illegally entered the country.

The decision states that the Petitioner “willfully misrepresented a material fact in [the company’s] labor certification application by giving a false answer on the [application form].” But the decision does not specify the purported false answer or whether the revocation stems from other purported false answers on the application. Indeed, the company stated that it was “very difficult to respond to such allegations since the Petitioner is not sure about [to] what [the] USCIS adjudicator is referring.” Because the Acting Director did not explain the specific reasons for the revocation, we will withdraw the decision and remand the matter.

On remand, the Director should enter a new decision specifying and explaining the reasons for the revocation, *see* 8 C.F.R. § 205.2(c), and certifying the decision to us for review. *See* 8 C.F.R. § 103.4. If the record supports additional, potential grounds of revocation, the Director should issue a new NOIR informing the company of all potential revocation grounds and allowing it a reasonable opportunity to respond. *See* 8 C.F.R. § 205.2(b). Upon timely receipt of a response, the Director should then review the entire record, enter a new decision, and, if adverse to the Petitioner, certify it to us for review.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis, which, if adverse to the Petitioner, shall be certified to us for review.