U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 1857280

Date: JAN. 27, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Petitioner, a provider of management services, seeks to employ the Beneficiary as a management analyst. The company requests his classification under the second-preference, immigrant visa category for members of the professions holding advanced degrees or their equivalents. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A).

After initially granting the filing, the Director of the Texas Service Center revoked the petition's approval. The Director concluded that the Petitioner did not demonstrate: 1) the *bona fides* of its job offer; 2) the Beneficiary's possession of the minimum qualifications for the offered position or requested immigrant visa category; or 3) the company's ability to pay the position's proffered wage. The Director also found that, on the accompanying certification from the U.S. Department of Labor (DOL), the Beneficiary willfully misrepresented his qualifying employment experience.

A petitioner must appeal a revocation decision within 15 days of the decision's service. 8 C.F.R. § 205.2(d). Unless treated as a motion by the official who made the unfavorable decision, an untimely appeal must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(*1*), (*2*).

The Director served the revocation decision to the Petitioner by mail. The company therefore had an additional three days in which to appeal - or 18 total days from the decision's service. *See* 8 C.F.R. § 103.8(b). The Petitioner filed its appeal on June 6, 2018, 36 days after the May 2, 2018, date of the revocation decision. Thus, the appeal appears to be untimely.

The Petitioner, however, asserts that it timely appealed the revocation decision within 18 days of its service. The Petitioner submitted a copy of an envelope in which the company purportedly received the decision. The envelope reflects a postmark of May 21, 2018, 19 days after the decision's date. Thus, the Petitioner contends that the Director did not serve the decision by mail until May 21, 2018, and that the company timely appealed the decision within 18 days of its service.

Despite the copy of the postmarked envelope, internal information systems of U.S. Citizenship and Immigration Services (USCIS) record the Director's service of the revocation decision on the decision's date of May 2, 2018. In the absence of clear evidence to the contrary, adjudicators must presume that government officials properly discharged their official duties. *United States v.*

Armstrong, 517 U.S. 456, 464 (1996); *Matter of P-N-*, 8 I&N Dec. 456, 458 (BIA 1959). This "presumption of regularity" requires us to presume the accuracy of information recorded in USCIS systems and thus the Director's service of the revocation decision by mail on May 2, 2018.

Counsel asserts the Petitioner's receipt of the revocation decision in the envelope postmarked May 21, 2018. But counsel's assertion does not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). The Petitioner must substantiate counsel's statement with independent evidence, which may include affidavits and declarations. The Petitioner has not provided clear evidence that it received the revocation decision in the envelope of which the record contains a copy. The company therefore has not overcome the presumption of regularity that the Director served the decision by mail on May 2, 2018.

The Director did not treat the Petitioner's untimely appeal as a motion. *See* 8 C.F.R. § 103.3.3(103.3(a)(2)(v)(B)(*2*). We must therefore reject the submission as improperly filed. *See* 8 C.F.R. § 103.3.3(103.3(a)(2)(v)(B)(*1*).

ORDER: The appeal is rejected.