

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: FEB 10 2015

OFFICE: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Professional pursuant to Section 203(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,


Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Texas Service Center Director (TSC Director). The petitioner subsequently presented a letter to the U.S. Citizenship and Immigration Services (USCIS) office in Laguna Niguel, California, stating that it would like to withdraw the petition. Later the Nebraska Service Center Director (NSC Director) issued two decisions which purported to revoke the approval of the petition and invalidate the underlying labor certification. The second of those decisions was appealed to the Chief, Administrative Appeals Office (AAO). The decisions of the NSC Director will be withdrawn. The case will be remanded to the NSC Director for the issuance of a new decision.

The petitioner is an assisted living facility. It seeks to permanently employ the beneficiary in the United States as an “activity coordinator” pursuant to section 203(b)(3)(A)(i) or (ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). Section 203(b)(3)(A)(i) of the Act provides for the granting of preference classification to “[q]ualified immigrants who are capable . . . of performing skilled labor (requiring at least 2 years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.” Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to “[q]ualified immigrants who hold baccalaureate degrees and are members of the professions.”

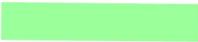
The petitioner filed its Form I-140, Immigrant Petition for Alien Worker, on March 28, 2007. The petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which was filed with the U.S. Department of Labor (DOL) on November 22, 2006, and certified by the DOL (labor certification) on November 30, 2006.

The petition was approved on July 24, 2008.

The record shows that following a site visit by USCIS investigating officers to the petitioner’s premises in June 2013 and further communications between the parties during that summer, the petitioner presented a letter to USCIS stating that it would like to withdraw the I-140 petition it filed for the beneficiary in 2007. The letter was dated August 27, 2013, addressed to the USCIS office in Laguna Niguel, California, and signed by the petitioner’s owner and licensee, [REDACTED]

The regulation at 8 C.F.R. § 103.2(b)(6) provides that “[a]n applicant or petitioner may withdraw an (*sic*) benefit request at any time until a decision is issued by USCIS or, in the case of an approved petition, until the person is admitted or granted adjustment or change of status, based on the petition. However, a withdrawal may not be retracted.” Nor may a withdrawal be refused by USCIS. *See Matter of Cintron*, 16 I&N Dec. 9 (BIA 1976). Once a petition is withdrawn, USCIS may not deny it on the merits. *Id.*

In this case, therefore, once the petitioner withdrew its I-140 petition in August 2013 USCIS had no authority to engage in further substantive adjudication. Notwithstanding the lack of adjudicatory authority, the NSC Director issued a Notice of Intent to Revoke the approval of the petition on October 25, 2013, followed by decisions on January 24, 2014 and July 8, 2014 that revoked the approved petition and invalidated the labor certification.



The petitioner filed an appeal on August 11, 2014. In accord with the above cited regulation and case law, we find that the NSC Director had no authority to adjudicate the petition on the merits after the petitioner's withdrawal letter was received by USCIS. Therefore, we will withdraw the revocation decisions of January 24, 2014 and July 8, 2014. Furthermore, since there is no legal basis for the revocation decisions, we have no jurisdiction to consider the appeal currently before us. Accordingly, we will remand this case to the NSC Director for a new decision consistent with the petitioner's expressed intention in August 2013 to withdraw the petition.

ORDER: The NSC Director's decisions of January 24, 2014 and July 8, 2014 are withdrawn. The petition is remanded to the NSC Director for further consideration and action in accord with the petitioner's letter of August 27, 2013.