



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

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

In Re: 28788592

Date: NOV. 30, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a computer and information systems manager, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse a job offer - and the category's related requirement for certification from the U.S. Department of Labor (DOL) - if a petitioner demonstrates that a waiver of these U.S.-worker protections would be "in the national interest." *Id.*

The Acting Director of the Texas Service Center denied the petition. The Director found sufficient evidence that the Petitioner's proposed endeavor has "substantial merit." But the Director concluded that the Petitioner did not demonstrate his qualifications for the requested immigrant visa category as a member of the professions holding an "advanced degree" or the overall merits of a national interest waiver. On appeal, the Petitioner maintains his eligibility for the requested visa category as either an advanced degree professional or a noncitizen of "exceptional ability." *See* section 203(b)(2)(A) of the Act. He also contends that the Director overlooked evidence supporting the waiver request.

The record indicates that, by the appeal's filing, the Petitioner had not received a written decision on the petition. Also, the Director's decision did not consider the Petitioner's qualifications for the requested visa category as a noncitizen of exceptional ability. We will therefore withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

When USCIS denies a petition, the Agency must "explain in writing the specific reasons for denial." 8 C.F.R. § 103.3(a)(1)(i). Generally, USCIS must serve a written decision "by ordinary mail addressed to the affected party . . . at [their] last known address." 8 C.F.R. § 103.8(a)(1)(i).

USCIS records show that the Petitioner notified the Agency of his current address in March 2023. *See* section 266(b) of the Act, 8 U.S.C. § 1306(b) (requiring noncitizens to notify USCIS of address changes within 10 days or face criminal fines, removal, or both). The following month, the Director issued a written decision on the petition. The Petitioner states that USCIS' online system timely informed him of the denial. But he said he notified the Agency about two weeks later that he had not received a copy of the written decision explaining the specific reasons for the denial. Lacking a written

decision a few days before the 33-day appellate deadline, *see* 8 C.F.R. § 103.3(a)(2)(i), 103.8(b), the Petitioner timely filed the appeal. A month later, still without a written decision explaining the petitioner's denial, he submitted a brief addressing all of the potential denial grounds stated in the Director's prior request for additional evidence. *See* Form I-290B, Notice of Appeal or Motion, Part 2 1.b, [www.uscis.gov/sites/default/files/document/forms/i-290b.pdf](http://www.uscis.gov/sites/default/files/document/forms/i-290b.pdf) (allowing appellants to submit briefs within 30 days of filing appeals); *see also* 8 C.F.R. § 103.2(a)(1) (incorporating form instructions into the regulations).

Because the Petitioner did not timely receive the written decision at his current address, we will remand the matter. On remand, the Director should consider and address the Petitioner's eligibility for the requested EB-2 category as a noncitizen of exceptional ability. Assuming the Director continues to find the Petitioner ineligible for the requested benefit, the Director should timely issue a new decision to the Petitioner at his current address and certify the matter to us for review. *See* 8 C.F.R. § 103.4(a)(1), (4). When certifying the case, the Director should notify the Petitioner and allow him to submit a brief within 30 days of certification or to waive the 30-day period. *See* 8 C.F.R. § 103.4(a)(2).

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