



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

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

In Re: 23431724

Date: DEC. 13, 2022

Appeal of California Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-2B)

The Petitioner, a construction company, seeks to employ the Beneficiaries as construction laborers under the H-2B nonimmigrant classification for temporary nonagricultural services or labor. *See* Immigration and Nationality Act section 101(a)(15)(H)(ii)(b), 8 U.S.C. § 1101(a)(15)(H)(ii)(b). The H-2B program allows a qualified U.S. employer to bring certain noncitizens to the United States to fill temporary nonagricultural jobs. The Petitioner's labor or services need must be a one-time occurrence, seasonal, peak load, or intermittent.

The Director of the California Service Center initially approved the petition, but subsequently revoked the approval on notice because the Petitioner's financial institution did not honor one of the checks submitted for payment of filing fees. On appeal, the Petitioner submits additional evidence in support of its claim that the check was returned due to a bank error. It requests that it be permitted to resubmit payment and asserts that the petition's approval should be reinstated.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

Every benefit request must be accompanied by the fee(s) required by regulation. 8 C.F.R. § 103.2(a)(1). If U.S. Citizenship and Immigration Services (USCIS) has already approved a benefit request and any fee, including one fee of a multiple fee filing, is dishonored, USCIS may revoke the approval upon notice. *See generally* 1 *USCIS Policy Manual* B.6(B), <https://www.uscis.gov/policy-manual>. To sufficiently respond to a notice of intent to revoke (NOIR) issued based on a returned filing fee, the petitioner or applicant must demonstrate that the payment was honored or that USCIS erroneously rejected it. *Id.* Otherwise, USCIS will conclude that the petitioner or applicant did not pay the required fees under 8 C.F.R. § 103.2(a)(1) and will revoke the approval of the benefit request. *Id.*

The Petitioner filed the petition on February 22, 2022, and USCIS approved it on February 28, 2022, with validity dates of April 1, 2022, through November 15, 2022. On April 1, 2022, the Director issued a NOIR informing the Petitioner that a check submitted as payment for a filing fee was returned

by its financial institution. The Director requested that the Petitioner “provide proof that your payment was honored by the financial institution” and advised that it would need to file a new petition if unable to provide this proof. In addition, the NOIR informed the Petitioner that it could not overcome the proposed revocation by submitting any form of repayment.

In response, the Petitioner submitted a letter from its financial institution explaining that it “inadvertently returned” a check in the amount of \$150.00. It attributed the returned check to “bank error” rather than to insufficient funds in the Petitioner’s account. The bank’s letter states that “[t]he item may be redeposited and will be paid.” The Director revoked the approval of the petition concluding that “the submitted evidence was not sufficient to establish that your payment method to pay the filing fee was honored by the financial institution.”

On appeal, the Petitioner submits a copy of the \$150.00 filing fee check in question, an account activity statement showing that check was debited from its checking account on February 25, 2022, and subsequently credited back to the account on February 28, and evidence that it had sufficient funds in its account to pay this amount. The Petitioner asserts that its bank “mistakenly believed the check to be fraudulent” and that the error can be solely attributed to the financial institution. The Petitioner also submits a replacement check for the \$150.00 H-2B Fraud Protection fee.

The Petitioner has not established that the Director erroneously revoked the approval of the petition.

The Director properly issued the NOIR in accordance with USCIS policy because the Petitioner’s financial institution returned its check. And the Director’s statement that the Petitioner may not submit any form of repayment was also correct, as it reflected the agency’s articulation of policy at 1 *USCIS Policy Manual, supra*, at B.6(B): “[t]o sufficiently respond to a NOIR, the requestor must demonstrate that the payment was honored or that it was rejected by USCIS by mistake.”

The evidence submitted in response to the NOIR did not include the requested “proof that [the Petitioner’s] payment was honored by the financial institution.” The Petitioner’s financial institution attributed the returned check to a bank error and stated that the check could be resubmitted. However, the response to the NOIR did not establish that the payment was ultimately honored or that USCIS had mistakenly rejected it. Absent such a showing, the Director correctly concluded that the Petitioner’s response to the NOIR did not overcome the proposed basis for revocation.

The Petitioner requests that we consider the additional evidence submitted in support of its appeal. The Petitioner does not indicate that its online bank records were unavailable at the time it responded to the NOIR or otherwise explain why this evidence was not submitted with its response. Where, as here, a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, we will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988).

Nevertheless, we acknowledge that the new evidence tends to support the Petitioner’s claim that its financial institution was at fault for the returned payment at issue and that it cannot be attributed to insufficient funds or an error on the Petitioner’s part. The evidence does not, however, show that the payment was ultimately honored by the financial institution or that USCIS had mistakenly rejected it.

Therefore, the new evidence, even if it had been submitted in response to the NOIR, would have been insufficient to overcome the basis for revocation.

Finally, the Petitioner cites to an unpublished decision in which we upheld the revocation of an approved petition where the payment method was not honored by the financial institution. This decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. The Petitioner suggests that, based on a comparison of facts between this matter and the cited non-precedent decision, its appeal should be sustained.

Here, for the reasons discussed above, the Petitioner has not met its burden to establish that its filing fee check was honored by its financial institution or that USCIS mistakenly rejected its method of payment. Absent a showing that one of these circumstances was present, the revocation was mandated by applicable law and policy. The Petitioner has not cited any binding authority in support of its position that it can, in the alternative, overcome the revocation decision by showing that a returned payment was attributable to bank error, or by simply resubmitting its payment.

We acknowledge that the Petitioner was not at fault for the returned payment, and we are sympathetic to its situation. However, the record reflects that the Director properly applied USCIS law and policy in the revocation proceeding. Accordingly, we will dismiss the appeal.

ORDER: The appeal is dismissed.