

I-140 Revocation by USCIS not Eligible for Federal Court Review

by Michelle B. Micetic

On July 20, 2021, the U.S. Court of Appeals for the D.C. Circuit held that the Immigration and Nationality Act (“INA”) precludes court review of a decision by U.S. Citizenship and Immigration Services (“USCIS”) to revoke a previously approved I-140 Immigrant Petition. *iTech U.S., Inc. v. Renaud*, No. 20-5235, 2021 U.S. App. LEXIS 21397 at *1-20 (D.C. Cir. 2021).

iTech US, Inc. (“iTech”) sued USCIS after the agency revoked an I-140 immigrant visa petition the company had filed on behalf of an Indian national. In support of its I-140 petition, iTech submitted evidence that the sponsored candidate met the position’s educational requirements in the form of a bachelor’s degree certificate and transcripts from 1999 through 2002. The company also submitted evidence of its ability to pay the proffered wage.

In 2015, USCIS approved the I-140 petition, but three years later decided to revoke the approval. The initial petition approval occurred during the Obama Administration and the revocation was done during the Trump Administration.

The agency cited inconsistencies in the record as to whether the sponsored candidate had actually met the position’s educational requirement, and whether the company had the continued ability to pay the required proffered wage.

iTech, in turn, alleged that the USCIS’s decision to revoke the I-140 petition was arbitrary and capricious, and that the agency had not engaged in rational decision-making with respect to the evidence on record.

A federal district court dismissed iTech’s initial lawsuit, citing two interlocking provisions of the INA which precluded judicial review of a decision by USCIS to revoke an immigrant petition. iTech appealed the district court decision, and the D.C. Circuit, employing principles of statutory construction, agreed with the lower court. The three-judge D.C. panel said Congress had shown clear intent to insulate visa revocation decisions from judicial review. The decision places the U.S. Court of Appeals for the D.C.

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Circuit in alignment with nearly all other federal appeals courts, which have also concluded that the INA precludes judicial review of a decision by USCIS to revoke an immigrant petition.

If an employer seeks to sponsor someone for U.S. permanent resident status, it is critical to engage qualified counsel to advise on the hyper-technical requirements of PERM labor certification and immigrant visa petition processing. Although each Presidential Administration places different emphasis on immigration law compliance, year-after-year USCIS remains very strict about the burden of proof placed on employers seeking immigration benefits for prospective employees. And as noted in the case referenced here, employers have limited ability to find relief in federal court should USCIS make what it considers an incorrect decision.