



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

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

In Re: 29321528

Date: DEC. 15, 2023

Appeal of California Service Center Decision

Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker

The Petitioner, a general contractor and provider of heavy equipment rental services, seeks to temporarily employ the Beneficiaries as heavy equipment mechanics under the CNMI-Only Transitional Worker (CW-1) nonimmigrant classification. *See* 48 U.S.C. § 1806(d). It also requests that each Beneficiary be granted an extension of their CW-1 nonimmigrant status. The CW-1 visa classification allows employers in the Commonwealth of the Northern Mariana Islands (CNMI) to apply for permission to temporarily employ foreign workers who are otherwise ineligible to work under other nonimmigrant worker categories.

The Director of the California Service Center denied the petition, concluding the Petitioner did not establish, as required, that each Beneficiary was lawfully present in the CNMI at the time of filing. The Director further found that the Petitioner did not comply with regulatory requirements to file the extension of stay request prior to the expiration of the Beneficiaries' previously granted CW-1 nonimmigrant status. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

Upon consideration of the record, including the Petitioner's appeal, we adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

As noted, the Director determined that none of the Beneficiaries satisfied the beneficiary eligibility requirements for CW-1 transitional workers at 8 C.F.R. § 214.2(w)(2) by maintaining a lawful nonimmigrant status at the time of filing.¹ The record reflects that the Beneficiaries' previously

¹ Any noncitizen who is in the CNMI when a CW-1 petition is filed on their behalf must be lawfully present. 8 C.F.R. § 214.2(w)(2)(iv). The regulations further state that "lawfully present in the CNMI" means that the noncitizen was lawfully admitted or paroled into the CNMI under the immigration laws on or after the transition program effective date and remains in a lawful immigration status. 8 C.F.R. § 214.2(w)(1)(vi).

granted CW-1 status expired on September 30, 2022, 175 days prior to the filing of this petition on March 24, 2023. The Petitioner provided an explanation for the delayed filing, noting that its initial application for a Temporary Labor Certification (TLC) from the Department of Labor (DOL) was filed early, but ultimately denied by DOL due to a deficiency in the application. After an unsuccessful appeal, the Petitioner re-filed and received a certified TLC from DOL on March 15, 2023. The Petitioner requested that the Director excuse the late filing as a matter of discretion under the exception described at 8 C.F.R. § 214.1(c)(4), contending the delay was due to extraordinary circumstances beyond its control. However, the Director determined that the denial of the Petitioner's initial TLC did not constitute an extraordinary circumstance that could excuse the filing of the extension nearly six months after the expiration of the Beneficiaries' nonimmigrant status. We agree with the Director that a favorable exercise of discretion was not warranted based on the facts presented.

The Petitioner also pointed to U.S. Citizenship and Immigration Services (USCIS) guidance published on October 18, 2022 which indicated the agency may exercise discretion to excuse late filings of CW-1 petitions in cases where: (1) the TLC application was filed with DOL at least 60 days before the requested start date; (2) the petition is otherwise properly filed and includes an approved TLC; and (3) USCIS received the petition no later than 30 days after the date of TLC approval or by November 15, 2022, whichever is earlier.² The Director explained that the Petitioner did not qualify for this limited accommodation as it did not file its petition by November 15, 2022.

On appeal, the Petitioner re-iterates the same claims it made at the time of filing and in response to the Director's RFE. The Petitioner continues to attribute the late filing to the DOL's "slow, time-consuming and laborious process," emphasizes that it could not have foreseen the denial of its initial TLC, and notes that it submitted all documents to the DOL "in good faith" with the expectation that the TLC would be approved. These claims were thoroughly addressed in the Director's well-reasoned decision. The Petitioner once again states that "extraordinary circumstances" present in its may excuse both the late filing of the extension request and the Beneficiaries' lack of lawful immigration status at the time of filing. However, for the reasons already discussed, the Petitioner has not demonstrated that the circumstances present in this case warrant the favorable exercise of discretionary authority under 8 C.F.R. § 214.1(c)(4) or under the limited accommodation announced by USCIS in the CW-1 filing guidance alert issued in October 2022.

The Petitioner did not establish that the Beneficiaries remained in lawful status in the CNMI when this petition was filed, and they are therefore ineligible for CW-1 classification under 8 C.F.R. § 214.2(w)(2)(iv). Accordingly, the appeal will be dismissed, and the petition remains denied.

ORDER: The appeal is dismissed.

² See USCIS Alert, Filing Guidance for CW-1 Petitions Seeking to Extend Status (Oct. 18, 2022), <https://www.uscis.gov/newsroom/alerts/filing-guidance-for-cw-1-petitions-seeking-to-extend-status>.