U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29321885

Date: DEC. 15, 2023

Appeal of California Service Center Decision

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

The Petitioner, a hotel and provider of commercial space rental services, seeks to temporarily employ the Beneficiaries as maintenance and repair workers 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 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. Finally, the Director concluded that the Petitioner did not demonstrate that it is an eligible employer engaged in legitimate business in the CNMI. The matter is now before us on appeal. 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).

On appeal, the Petitioner does not contest the Director's determination that it did not demonstrate that it meets all employer eligibility requirements for filing a CW-1 petition under 8 C.F.R. § 214.2(w)(4). An eligible employer must be engaged in legitimate business. *See* 8 C.F.R. § 214.2(w)(4)(i). A "legitimate business" is defined, in relevant part, as an active and operating commercial or entrepreneurial undertaking that meets applicable legal requirements for doing business in the CNMI.

See 8 C.F.R. § 214.2(w)(1)(vii)(B). The Petitioner filed the petition with a copy of its expired business license issued by the CNMI Division of Revenue and Taxation. Although the Petitioner provided evidence that it had applied to renew its license, it did not submit a copy of a new, valid license in response to the Director's request for evidence (RFE), and, as noted, does not address this ground for denial on appeal. As the Petitioner has not established that it maintained its business license in the CNMI at the time of filing, we agree with the Director's determination that it did meet all employer eligibility requirements at 8 C.F.R. § 214.2(w)(4).

The Director further determined that neither Beneficiary satisfied the beneficiary eligibility requirements for CW-1 transitional workers at 8 C.F.R. § 214.2(w)(2) as neither was maintaining a lawful nonimmigrant status at the time of filing.[1] The record reflects that both Beneficiaries' previously granted CW-1 status expired on September 30, 2022, 185 days prior to the filing of this petition on April 3, 2023. The Petitioner provided an explanation for the delayed filing to request an extension of their stay, 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 16, 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), arguing that 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 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 incudes 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" 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

[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).

[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.

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). Further, the Petitioner has not overcome the Director's determination that it did not meet all employer eligibility requirements at 8 C.F.R. § 214.2(w)(4) as of the date of filing. Accordingly, the appeal will be dismissed, and the petition remains denied.

ORDER: The appeal is dismissed.