U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21564948

Date: APR. 14, 2022

Appeal of Texas Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

The Petitioner seeks to employ the Beneficiary under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both: (a) the theoretical and practical application of a body of highly specialized knowledge; and (b) the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Texas Service Center Director denied the Form I-129, Petition for a Nonimmigrant Worker, concluding that the Petitioner did not establish that the Beneficiary was qualified to perform the duties of the proffered position. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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.

I. ANALYSIS

After considering the entire record, including the evidence submitted and arguments made on appeal, we adopt and affirm the Director's ultimate determination with the comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623, 624 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994)); *see also Chen v. INS*, 87 F.3d 5, 7–8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

The Beneficiary possesses a foreign degree from India and does not possess a U.S. bachelor's or higher degree required by the specialty occupation from an accredited college or university. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C)(*1*). Before the Director, the Petitioner did not offer evidence that his foreign degree was determined to be equivalent to a U.S. bachelor's degree or higher required by the specialty occupation from an accredited college or university. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C)(*2*). Nor did it illustrate that the Beneficiary's education, specialized training, or progressively responsible

experience is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*). Such equivalency for H-1B candidates may only be demonstrated through the means prescribed in the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*)–(*5*).

On appeal, the Petitioner does not identify a specific error in the Director's decision and only reasserted the Beneficiary's eligibility by discussing his foreign degree transcripts and coursework. The Petitioner did not offer an evaluation of the Beneficiary's education or experience as required by the regulation, nor did it offer evidence and arguments otherwise required by the regulation.

II. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden here, and the petition will remain denied.

ORDER: The appeal is dismissed.