U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22107181

Date: AUG. 25, 2022

Appeal of Vermont 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 petition was initially approved. However, the Director of the Vermont Service Center ultimately revoked the petition after issuing a notice of her intention to revoke it (NOIR), concluding that the general prohibition on filing multiple H-1B petitions at 8 C.F.R. § 214.2(h)(2)(i)(G) is applicable to this petition.

On appeal, the Petitioner asserts that the Director erred in revoking the petition. 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*. *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.

I. LAW

Section 101(a)(15)(H)(i)(b) of the Act defines an H-1B nonimmigrant as a foreign national "who is coming temporarily to the United States to perform *services . . . in a specialty occupation* described in section 214(i)(1) . . . " (emphasis added). Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), defines the term "specialty occupation" as an occupation that requires "theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates section 214(i)(l) of the Act but adds a non-exhaustive list of fields of endeavor. In addition, 8 C.F.R. § 214.2(h)(4)(iii)(A) provides that the proffered position must meet one of four criteria to qualify as a specialty occupation position. Lastly, 8 C.F.R. § 214.2(h)(4)(i)(A)(*1*) states that an H-1B classification may be granted to a foreign national who "*will perform services in a specialty occupation . . .* " (emphasis added).

The regulation at 8 C.F.R. § 214.2(h)(2)(i)(G) prohibits multiple "cap-subject" H-1B petitions from being filed in the same fiscal year for the same beneficiary by an employer, or, under certain circumstances, by "related entities." 8 C.F.R. § 214.2(h)(2)(i)(G) states:

> *Multiple H–1B petitions.* An employer may not file, in the same fiscal year, more than one H–1B petition on behalf of the same [beneficiary] if [she] is subject to the numerical limitations of section 214(g)(1)(A) of the Act or is exempt from those limitations under section 214(g)(5)(C) of the Act. If an H–1B petition is denied, on a basis other than fraud or misrepresentation, the employer may file a subsequent H–1B petition on behalf of the same [beneficiary] in the same fiscal year, provided that the numerical limitation has not been reached or if the filing qualifies as exempt from the numerical limitation. Otherwise, filing more than one H–1B petition by an employer on behalf of the same [beneficiary] in the same fiscal year will result in the denial or revocation of all such petitions. If USCIS believes that related entities (such as a parent company, subsidiary, or affiliate) may not have a legitimate business need to file more than one H–1B petition on behalf of the same [beneficiary] subject to the numerical limitations of section 214(g)(1)(A) of the Act or otherwise eligible for an exemption under section 214(g)(5)(C) of the Act, USCIS may issue a request for additional evidence or notice of intent to deny, or notice of intent to revoke each petition. If any of the related entities fail to demonstrate a legitimate business need to file an H–1B petition on behalf of the same [beneficiary], all petitions filed on [her] behalf by the related entities will be denied or revoked.

II. ANALYSIS

The record reflects that on June 28, 2021, the Petitioner filed a petition seeking a cap-subject H-1B visa on behalf of the Beneficiary, which was approved on July 6, 2021.[1] On June 30, 2021, the Petitioner filed a second cap-subject H-1B petition for the Beneficiary - which is the petition before us on appeal. The instant petition was approved on July 7, 2021.

On July 27, 2021, the Director issued a NOIR in each of the petitions notifying the Petitioner of her intention to revoke them. She indicated therein that it appeared that the approval of the petitions violated the regulatory requirements at 8 C.F.R. § 214.2(h) or involved gross error, as the Petitioner had violated the general prohibition on filing multiple H-1B petitions under 8 C.F.R. § 214.2(h)(2)(i)(G). 8 C.F.R. § 214.2(h)(11)(iii)(A)(5). The Petitioner responded to the Director's NOIR in the first petition by submitting an August 2021 letter requesting the withdrawal of that petition, asserting that it had "accidental[ly]" submitted duplicate cap-subject petitions. The Petitioner did not submit a response to the NOIR issued in the instant petition; the Director revoked the petition in February 2022.[2] 8 C.F.R. § 214.2(h)(11)(iii)(B).

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[1] *See* [redacted] which we have reviewed.

[2] In support of the appeal, the Petitioner provides a copy of the withdrawal letter that it submitted in response to the Director's NOIR in the first petition. The Petitioner asserts that this document is evidence that it responded to the Director's NOIR in the instant petition. The withdrawal letter does not reference the instant petition, nor does the record substantiate that this document was actually submitted in support of *this* petition prior to its revocation.

On appeal, the Petitioner does not dispute that it filed two H-1B cap-subject petitions for the instant Beneficiary within the same fiscal year. The Petitioner asserts on appeal that it filed the instant petition because it "believed there may have been an error with the filing of the [first petition], mainly that the I-129 filing fee and premium processing checks attached to the petition were improperly submitted." This assertion is at odds with the explanation provided by the Petitioner's in the withdrawal letter for the first petition. In that letter, the Petitioner averred that the filing of the instant petition was an accident, not an attempt to fix filing fee issues in the first petition. Notably, the instant petition was filed without any explanation or supporting evidence to substantiate the Petitioner's contentions on appeal. We conclude that the Petitioner's contradictory statements seeking to explain why it impermissibly filed two cap-subjects petitions on the Beneficiary's behalf in the same fiscal year are of little probative value to the matter here. *Matter of Chawathe*, 25 I&N Dec. at 376. We further note that a single employer, as is the case here, may not file more than one cap-subject petition for the same beneficiary within the same fiscal cap year even if there is a legitimate business need. *See* 8 C.F.R. § 214.2(h)(2)(i)(G); *Matter of S- Inc.*, Adopted Decision 2018-12 (AAO Mar. 23, 2018).

For the reasons discussed, the Petitioner has not demonstrated that the Director erred in revoking the petition. Therefore, we reaffirm the Director's determination that the Petitioner impermissibly filed multiple cap-subject H-1B petitions in the same fiscal year for the instant Beneficiary, and that the general prohibition on filing multiple H-1B petitions at 8 C.F.R. § 214.2(h)(2)(i)(G) is applicable here. The petition will remain revoked and may not be approved.

III. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.