U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24152407

Date: DEC. 23, 2022

Appeal of California 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 California Service Center Director denied the Form I-129, Petition for a Nonimmigrant Worker (petition), on multiple and related bases. First, the organization did not establish that it satisfied the definition of a nonprofit research organization found in the regulation. Second, because of that shortcoming the Petitioner did not substantiate that it qualified for the exemption from the fee associated with the American Competitiveness and Workforce Improvement Act (ACWIA).

And finally, also stemming from the Petitioner's failure to demonstrate it was a qualifying nonprofit entity, it was subject to the H-1B numerical cap, but it filed the petition after the "cap season" was closed. 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.

The term "nonprofit research organization" is defined at 8 C.F.R. § 214.2(h)(19)(iii)(C) as "an organization that is primarily engaged in basic research and/or applied research."[1] Further, the regulation at 8 C.F.R. § 214.2(h)(19)(iv) requires that a nonprofit organization as described in 8 C.F.R. § 214.2(h)(19)(iii)(C) be "[d]efined as a tax exempt organization under . . . 26 U.S.C. § 501(c)(3), (c)(4) or (c)(6), and [have] been approved as a tax exempt organization for research or educational purposes by the Internal Revenue Service."

Two benefits derive from meeting the definition of a nonprofit research organization that include being exempt from both an additional ACWIA fee and from the H-1B annual numerical limitations. *See* 8 C.F.R. § 214.2(h)(19)(iii)(C) and 8 C.F.R. § 214.2(h)(8)(iii)(F), respectively.

[1] The regulation at 8 C.F.R. § 214.2(h)(19)(iii)(C) also provides definitions for basic and applied research.

We incorporate by reference the Director's discussion relating to the Petitioner's operations and business model. And after considering the entire record, we also adopt and affirm the Director's decision with our added comments below. *See 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) ("[W]e join eight of our sister circuits in ruling that the Board [of Immigration Appeals] need not write at length merely to repeat the IJ's [Immigration Judge's] findings of fact and his reasons for denying the requested relief, but, rather, having given individualized consideration to a particular case, may simply state that it affirms the IJ's decision for the reasons set forth in that decision.").

Even though the Petitioner indicated on the Form I-290B, Notice of Appeal or Motion, that it would submit a detailed brief and additional evidence to accompany the appeal, it did not offer those materials. Instead, the Petitioner only submitted a letter indicating it decided against submitting any additional materials and requesting this office decide the case based on the evidence in the record. The statement submitted at the same time as the appeal broadly contested some elements of the Director's decision, but it did not explain how those factors were errors on the Director's part.

For instance, the Petitioner claims the Director disregarded expert testimony, but it does not discuss which expert's testimony was ignored—there were at least three letters the Petitioner characterizes as experts—or more specifically, what portions of each letter went without reply from the Director. The reason for filing an appeal is to provide an affected party with the means to remedy what they perceive as an erroneous conclusion of law or statement of fact within a decision in a previous proceeding. *See* 8 C.F.R. § 103.3(a)(1)(v).

By presenting only a generalized statement without explaining the specific aspects of the denial they consider to be incorrect, the affected party has failed to identify the basis for the appeal. *Matter of Valencia*, 19 I&N Dec. 354, 354–55 (BIA 1986). If an appellant does not explain the specific aspects of the decision that they consider to be incorrect, they have failed to meaningfully identify the reasons for taking an appeal. *Id.* In order to review the appeal, it would therefore be necessary to search through the record and speculate on what possible errors the filing party claims. "[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived." *United States v. Warshak*, 631 F.3d 266, 319 (6th Cir. 2010) (quoting *Tolbert v. Queens College,* 242 F.3d 58, 75 (2d Cir.2001)). Here, the Petitioner's vague references to errors below are inadequate to carry its burden on appeal.

In the end, the Director presented the relevant definitions and concluded the Petitioner failed to satisfy those descriptions. If the Petitioner means the Director ignored the content of its experts' letters, and that the content of those letters should be granted greater credence than the regulation's definitions, we do not agree. Regulations have the force and effect of law and are binding on all U.S. Citizenship and Immigration Services employees, and we cannot simply ignore those requirements. *Matter of L-*, 20 I&N Dec. 553, 556 (BIA 1992) (citing to *Bridges v. Wixon*, 326 U.S. 135, 153 (1945)). Further, "'an agency must adhere to its own rules and regulations,' and '[a]d hoc departures from those rules, even to achieve laudable aims, cannot be sanctioned, for therein lie the seeds of destruction of the orderliness and predictability which are the hallmarks of lawful administrative action.'" *NetworkIP, LLC v. F.C.C.*, 548 F.3d 116, 127 (D.C. Cir. 2008) (quoting *Reuters Ltd. V. F.C.C.*, 781 F.2d 946, 951 (D.C. Cir. 1986)).

Likewise, the Petitioner does not expand on the claim that the Director used extraneous and outdated information that did not originate from the petitioning organization as the basis for the adverse decision. The petitioning organization does not specify what materials were unimportant or outdated, what content it did not supply, nor do they explain what evidence is more salient and why.

The Petitioner has not adequately established that the Director committed an error and that they were prejudiced by that error. Because of that shortcoming and because we agree with the Director's ultimate determination, we will dismiss the appeal. In these proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought, but the Petitioner has not met that burden.

ORDER: The appeal is dismissed.