U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19420728

Date: FEB. 22, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, an industrial automation engineering and manufacturing company, seeks to temporarily employ the Beneficiary as a "software engineer I" under the H-1B nonimmigrant classification for specialty occupations. 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 Director of the Nebraska Service Center approved the petition but did so by issuing a Limited Validity Notice. Though the Petitioner had requested on the Form I-129 that the petition be approved through September 30, 2024, the Director only approved the petition through February 17, 2023. On appeal, the Petitioner requests that the petition be approved through September 30, 2024.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *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. DISCUSSION

As part of the H-1B process, a petitioner is required to obtain a certified labor condition application (LCA) from the Department of Labor prior to filing the H-1B petition with U.S. Citizenship and Immigration Services. Section 212(n) of the Act, 8 U.S.C. § 1182(n); 8 C.F.R. § 214.2(h)(4)(i)(B)(*1*). Critically, the regulation at 8 C.F.R. § 214.2(h)(9)(iii)(A)(*1*) states that an H-1B petition "shall be valid for a period of up to three years *but may not exceed the validity period of the labor condition application*" (emphasis added).

Though the Petitioner requested validity dates running from October 1, 2021 to September 30, 2024 on the Form I-129, it submitted an LCA certified for a period of employment that began February 16, 2021 and ended February 17, 2023. After determining that the petition was approvable, the Director correctly disregarded the dates provided on the Form I-129 and instead utilized the dates provided on

the LCA when calculating the approved petition's validity dates in accordance with 8 C.F.R. § 214.2(h)(9)(iii)(A)(*1*).

Though we acknowledge the Petitioner's statements on appeal that "[w]hen the LCA was completed . . . I did not understand that the dates to be supplied were expected to match the requested dates on Form I-129," and that the Petitioner contacted our agency and used open source information to avoid an error, the Petitioner has identified no legal authority by which we are permitted waive the requirements of 8 C.F.R. § 214.2(h)(9)(iii)(A)(*1*). The Director's decision to issue a limited approval notice was therefore correct and it will stand undisturbed.

II. CONCLUSION

The appeal will be dismissed as the petition's limited validity dates correspond with the LCA validity period.

ORDER: The appeal is dismissed.