U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19882482

Date: FEB. 24, 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 Beneficiary has not maintained her nonimmigrant status in the United States. 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. See Matter of Christo's Inc., 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will reject the appeal.

The authority to adjudicate appeals is delegated to us by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The regulations limit our jurisdiction over petitions for temporary workers to those described under 8 C.F.R. § 214.2 and 214.6. See 8 C.F.R. § 103.1(f)(3)(iii)(J) (2003).

A request for a change of status or an extension of stay in an H-1B submission is not a petition within the meaning of section 214(c)(1) of the Act, 8 U.S.C. § 1184(c)(1), and thus, does not confer any of the appeal rights normally associated with a petition. The Form I-129, Petition for a Nonimmigrant Worker, in this context is merely the vehicle by which information is collected to make a determination on the application for a change of status. See 8 C.F.R. § 214.1(c)(1). There is no appeal from the denial of a request for a change of status. 8 C.F.R. § 248.3(g).

The Director concluded that the Beneficiary has not maintained her nonimmigrant status in the United States and denied the request for change of status. On appeal, the Petitioner does not contest the Director's conclusion and seeks forgiveness for not knowing that the Beneficiary has not maintained her nonimmigrant status. However, we do not have jurisdiction over this matter, as issues surrounding

the Beneficiary's maintenance of nonimmigrant status are within the sole discretion of the Director. Accordingly, we must reject the appeal.

ORDER: The appeal is rejected.