U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21564750

Date: JULY 15, 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 the record did not establish the Beneficiary is qualified to perform services in the specialty occupation. On appeal, the Petitioner submits a brief and asserts the Director erred by denying the petition. 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. LEGAL FRAMEWORK

Section 214(i)(1)(B) of the Act, 8 U.S.C. § 1184(i)(2), mandates that a specialty occupation requires "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."[1] Furthermore, section 214(i)(2) of the Act states that an individual applying for classification as an H-1B nonimmigrant worker must possess:

> (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
>
> (B) completion of the degree described in paragraph (1)(B) for the occupation, or
>
> (C)(i) experience in the specialty equivalent to the completion of such degree, and

[1] We generally acknowledge that the core essence of this provision is the knowledge one attains in a specialty area, rather than a title various institutions might assign to a particular degree.

(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that a beneficiary must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

(*1*) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

(*2*) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

(*3*) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

(*4*) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

II. ANALYSIS

In the petition, the Petitioner stated the Beneficiary will occupy the "Hi Designer" position, which is similar to an art director. The Petitioner stated the position requires at least a bachelor's degree or equivalent in art, design, or a related field. Accompanying the petition, the Petitioner submitted a copy of the Beneficiary's foreign degree from the [redacted] University of Technology Arts and Sciences accompanied by its English translation, a Certificate from the Faculty of the Cultural Studies of Integrated Design Program from [redacted] University of Technology Arts and Sciences and its English Translation, a partial transcript from [redacted] School of Design reflecting 12 credit hours of undergraduate coursework at that institution, and a March of 2021 Academic Equivalency Evaluation from The Trustforte Corporation.

The Director issued a request for evidence (RFE) and in response the Petitioner offered the same evidence but highlighted particular aspects of the material. The Director determined the Petitioner did not show the Beneficiary meets any of the regulatory requirements at 8 C.F.R. § 214.2(h)(4)(iii)(C), and in turn that he is qualified to perform the duties of the offered position. Now on appeal, the Petitioner offers a brief.

The Beneficiary does not possess:

- A U.S. baccalaureate or higher degree required by the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*1*);

- An unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation found at 8 C.F.R. § 214.2(h)(4)(iii)(C)(*3*); or
- Education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, in addition to having recognition of expertise in the specialty through progressively responsible positions directly related to the specialty under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*).

The only remaining possibility is for the Petitioner to demonstrate the Beneficiary possesses a foreign degree determined to be equivalent to a United States bachelor's or higher degree that is required by the specialty occupation from an accredited college or university, according to 8 C.F.R. § 214.2(h)(4)(iii)(C)(*2*).

By itself, a degree from outside the United States does not qualify a foreign worker under the H-1B program. In order to equate a beneficiary's foreign degree to a U.S. bachelor's or higher degree, a petitioner should submit evidence of an evaluation of their foreign degree from a reliable service that specializes in evaluating foreign educational credentials. This type of evaluation should identify the beneficiary and the institution where they attained their foreign degree. The evaluation should also provide sufficient analysis to support its conclusion relating to how the foreign credentials equate to a four-year U.S. bachelor's degree. This conclusion should not only equate to the petitioner's degree requirements, but also the requirements of the occupation in general.

After reviewing the entire record, we note the Director thoroughly discussed the Petitioner's claims and its failure to meet any of the four regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C)(*1*)–(*4*). Upon consideration of the entire record, including the evidence submitted and arguments made on appeal, we adopt and affirm the Director's decision with the comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (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 Director acknowledged the Beneficiary's education evaluation, but concluded it was not supported with sufficient evidence. Specifically, the Director questioned whether the documentation the evaluation service utilized was adequate to support their conclusion that the Beneficiary attained the foreign equivalent of a Bachelor of Arts Degree in Design from an accredited college or university in the United States. The Director raised the issue that the Petitioner only provided a partial transcript relating to the Beneficiary's enrollment at [redacted] School of Design and the record did not contain the foreign degree transcripts.

On appeal, the Petitioner does not attempt to remedy that shortcoming by providing the Beneficiary's foreign degree transcripts, and instead it only disputes the Director's reasoning in denying the petition. Rather than supplying the supporting evidence the Director requested in the RFE and noted as absent in the denial, the Petitioner highlights the education evaluator's qualifications and asserts "it is common and general practice at [redacted] University of Technology for a student to complete four years of education at the institute." Neither the Trustforte Corporation education evaluation nor other evidence in the record adequately supports this statement from the Petitioner. In this instance, the

Petitioner's statement made without supporting documentation is of limited probative value and is insufficient to satisfy its burden of proof. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998).

Further, the Petitioner appears to inquire why the Director would question an employer of their stature positing that if the Beneficiary meets their employment requirements based on the evidence discussed above, that U.S. Citizenship and Immigration Services should find the evidence equally persuasive as it relates to an H-1B petition. However, the Petitioner does not take into account that inherent with employing foreign workers are additional burdens a U.S. employer must satisfy when compared to their self-imposed requirements of U.S. workers. Part of that burden in the H-1B context is to demonstrate a beneficiary's foreign education is equivalent to a U.S. bachelor's degree or higher in a specific specialty as described in section 214(i)(1)(B) and 8 C.F.R. § 214.2(h)(4)(iii)(C). A trier of fact should consider the issues presented and provide a sufficiently reasoned analysis. They are not however, required to interpret evidence in the manner a petitioner advocates. *E.g.*, *Matter of M-D-C-V-*, 28 I&N Dec. 18, 32 (BIA 2020).

It is a petitioner's prerogative to determine for itself what evidence it will or will not provide. But in refusing to provide requested material, it runs the risk of a denial for failure to satisfy its burden of proof. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998). We reviewed the Director's RFE and the reasons behind it and we conclude that their request for the Beneficiary's transcripts for his foreign degree to support the education evaluation was not improper. Ultimately, the Petitioner has not demonstrated that the Beneficiary's foreign degree is equivalent to a U.S. bachelor's degree in accordance with the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(*2*).

III. 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. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.