U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21564413

Date: JULY 15, 2022

Appeal of Texas Service Center Decision

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

The Petitioner seeks to extend the Beneficiary's temporary employment 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.

While the Texas Service Center Director approved the Form I-129, Petition for a Nonimmigrant Worker, it did so for a shorter period of time than the Petitioner requested. 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 sustain the appeal.

Section 214(g)(4) of the Act, 8 U.S.C. § 1184(g)(4), sets a six-year limitation on the period of authorized admission or stay for an H-1B nonimmigrant. However, as provided by 8 C.F.R. § 214.2(h)(13)(iii)(A), time spent outside the United States does not necessarily count when calculating the end-date of that six-year period. When it comes to making that calculation, the regulation at 8 C.F.R. § 214.2(h)(13)(iii)(C) states the following:

> Calculating the maximum H-1B admission period. Time spent physically outside the United States exceeding 24 hours by an alien during the validity of an H-1B petition that was approved on the alien's behalf shall not be considered for purposes of calculating the alien's total period of authorized admission under section 214(g)(4) of the Act, regardless of whether such time meaningfully interrupts the alien's stay in H-1B status and the reason for the alien's absence. Accordingly, such remaining time may be recaptured in a subsequent H-1B petition on behalf of the alien, at any time before the alien uses the full period of H-1B admission described in section 214(g)(4) of the Act.

Further details regarding this calculation, including the types of evidence that may be submitted and clarification that we may grant all, part, or none of the recapture period requested, are contained at 8 C.F.R. § 214.2(h)(13)(iii)(C)(*1*).

Whether this position is a specialty occupation, and whether the Beneficiary is qualified to perform its duties, are not at issue here. The issue we address in this appeal is the appropriate timeframe for the petition's approval. The Petitioner requested an approval period from June 14, 2021, through October 3, 2021.[1] The Director approved the petition from June 14, 2021, through July 2, 2021. In the Director's partial approval decision, they reasoned the Petitioner miscalculated the permissible timeframe in their requested dates of employment. The Director indicated any days in which the Beneficiary spent a portion of that day in the United States in the relevant L or H nonimmigrant status must be counted against her period of authorized H-1B stay. This meant her travel days—those in which she was not outside the United States for the full 24-hour period—would not count as days she could recapture. On appeal, the Petitioner submits a brief and additional evidence, and asserts the Director should have approved the petition for the full period requested.

The Director did not fully represent their calculations in their written decision when they concluded July 2, 2021, was the date in which the Beneficiary would accrue six years in the relevant status in the United States. Below are our calculations.

"In-status" Event	**Beginning Date**	**Ending Date**	**Years**	**Months**	**Days**
L-1 in United States	6/14/2015	9/19/2018	3	3	6
L-1 in United States	10/19/2018	1/9/2020	1	2	22
H-1B in United States	4/2/2020	6/14/2021[2]	1	2	13
Recapture Event	**Beginning Date**	**Ending Date**			**Days**
L-1 departure	9/20/2018	10/18/2018			29
H-4 status	1/10/2020	4/1/2020			83
Total days for recapture					112

The original six-year H-1B status limit date was June 14, 2021, (six years from the Beneficiary's first day in L-1 status). If we add the above time for recapture of 112 days, this provides a new six-year H-1B status limit date of October 4, 2021. Consequently, the Petitioner's original requested end date of October 3, 2021, was a permissible request and we will sustain the appeal based on that original requested ending date.

ORDER: The appeal is sustained.

[1] We note this exact timeframe for the Beneficiary's H-1B status would fill the gap between two of her other H-1B petitions.
[2] This date is six years from the Beneficiary's first day in L-1 status.