U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21563850

Date: JUL. 27, 2022

Appeal of Texas Service Center Decision

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

The Petitioner seeks to temporarily employ the Beneficiary as a software quality assurance tester 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 Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary maintained his student status and therefore was not eligibility for a change of status from F-1 student to H-1B nonimmigrant worker. The matter is now before us on appeal. On appeal, the Petitioner asserts that the Director's decision was in error.

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 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 remand the matter for entry of a new decision.

The Form I-129 before us consists of two separate benefit requests: (1) the Petitioner's request to classify the employment offer as appropriate for the H-1B category; and (2) the Beneficiary's change of status request.[1] The Director issued a decision on the latter request (the change of status request),

[1] Before 1991, these functions required two to three separate filings depending upon whether a change of status was being requested: one by the petitioner (Form I-129H) and the others by the beneficiary (Forms I-506 and I-539). For example, the regulations in effect on January 1, 1991 provided that a petitioner "shall file a petition in duplicate on Form I-129H with the service center which has jurisdiction over I-129H petitions in the area where the alien will perform services or receive training or as further prescribed in this section." 8 C.F.R. § 214.2(h)(2)(i)(A) (1991). Those 1991 regulations required applications for a change of status or visa classification to be submitted by the nonimmigrant alien on Form I- 506, Applicant for Change of Nonimmigrant Status, filed with the district director having jurisdiction over the place of employment if changing to H or L status. 8 C.F.R. § 248.3(a) and (b) (1991). In addition, they provided that "[a]n alien . . . shall apply for an extension of stay on Form I-539. . . . [E]ach alien seeking an extension of stay generally must execute and submit a separate application for extension of stay to the district office having jurisdiction over the alien's place of

but not on the former (the merits of the H-1B petition).[2] We will therefore remand the matter so that the Director may consider the issue of whether the proffered position qualifies for classification as a specialty occupation.

ORDER: The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

temporary residence in the United States." 8 C.F.R. § 214.1(c)(1) (1991). In implementing the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, the agency combined these functions into one form (Form I-129) to process the separate requests more efficiently. 56 Fed. Reg. 61111 (Dec. 2, 1991); 56 Fed. Reg. 61201, 61204 (Dec. 2, 1991).

[2] We have no appellate jurisdiction over the change of status request. 8 C.F.R. § 248.3(g). Our decision therefore does not impact the Director's determination that the Beneficiary failed to maintain valid status.