U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22737802

Date: OCT. 12, 2022

Appeal of California 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 California Service Center Director denied the Form I-129, Petition for a Nonimmigrant Worker (petition), concluding that the Petitioner did not establish that the Beneficiary's qualifications for the offered position. 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 conclude that a remand is warranted in this case.

I. LEGAL FRAMEWORK

The statutory and regulatory framework that we must apply in our consideration of the evidence of the Beneficiary's qualification to serve in a specialty occupation follows below.

Section 214(i)(1)(B) 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, 8 U.S.C. § 1184(i)(2), 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

[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.

(C)(i) experience in the specialty equivalent to the completion of such degree, and

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

II. ANALYSIS

The Beneficiary's name listed on the petition was [redacted] The Petitioner used the same name to refer to her within the filing. Part 3.3. of the petition required the Petitioner to list all other names the Beneficiary has used, and they left those spaces blank. Her Republic of India passport reflects her given name as [redacted] and her surname as [redacted]

The sole issue in the Director's decision relates to the education documents the Petitioner presented to establish the Beneficiary possessed the foreign equivalent to a U.S. bachelor's degree in a specific specialty. The 2001 Bachelor of Science degree from [redacted] University contained the following name: [redacted] The transcripts relating to that degree and to her 2004 post-graduate diploma also reflected a very similar name, and none of the education materials contained her name as presented in her passport. After issuing a request for evidence noting the incorrect name, the Director denied the petition.

On appeal, the Petitioner claims the Director erred in their determination. Within the appeal brief, the Petitioner identifies an employment letter from [redacted] reflecting [redacted] as also being a name the Beneficiary has used. And yet, an employment letter is not a form of documentation sufficient to establish a person's identity and the Director was correct in not accepting that as adequate evidence. Inherent with employing foreign nationals 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 qualifications for the offered position, which they did not achieve before the Director.

Nevertheless, a review of the initial filing materials reveals portions of the Beneficiary's foreign passport, and page three contains the following annotation: "The holder has previously been known by the name of [redacted]" That appears to possibly link the foreign educational documents to this Beneficiary, and the Director should make the final determination on that matter.

And we note that the simple submission of this evidence by the Petitioner before the Director—but failing to highlight it as a means to link the education documents to the Beneficiary—should not be viewed as adequate to satisfy their burden of proof. Although the Director theoretically could have located the linking information contained in the Beneficiary's passport, it was not their responsibility to essentially sift through this record and infer how each of the 227 pages the Petitioner submitted should apply to their eligibility claims. Filing parties should not submit large quantities of evidence without notifying the adjudicating body of the specific documentation that corroborates their claims, as doing so places an undue burden on the Director to search through the documentation without the aid of the filing party's knowledge. *Cf. Flagstar Bank, FSB v. Walker*, 451 S.W.3d 490, 505, n.51 (Tex. App. Nov. 14, 2014) (citing to *Aguilar v. Morales*, 162 S.W.3d 825, 838 (Tex. App. 2005)). The

truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989)).

In visa petition proceedings, it is a petitioner's duty to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The 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). "Commensurate with that burden is responsibility for explaining the significance of proffered evidence. The significance of [the evidence] is for [a petitioner] to put in context and explain in a meaningful way." *Repaka v. Beers*, 993 F. Supp. 2d 1214, 1219 (S.D. Cal. 2014); *Innova Sols., Inc. v. Baran*, 338 F. Supp. 3d 1009, 1023 (N.D. Cal. 2018); *Eguchi v. Kelly*, No. 3:16-CV-1286-D, 2017 WL 2902667, at *3 (N.D. Tex. July 7, 2017).

If the Director finds the passport information is sufficient, they should evaluate the remaining eligibility requirements under the H-1B program. If not, the Director should offer an adequate explanation to properly inform the Petitioner of the reasoning behind their decision.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis and entry of a new decision.