U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21986065

Date: SEP. 2, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an IT services and software development company, seeks to temporarily employ the Beneficiary as a "data analyst" under the H-1B nonimmigrant classification for specialty occupations. 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 Beneficiary was not eligible for the U.S. master's degree or higher numerical cap exemption (master's cap). On appeal, the Petitioner asserts that the Director erred. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit 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 dismiss the appeal.

I. LAW

Congress set the current annual numerical cap for the H-1B category of visas at 65,000 (the regular cap). Section 214(g)(1)(A) of the Act, 8 U.S.C. § 1184(g)(1)(A). However, not all H-1B visas are subject to the regular cap. For instance, an additional 20,000 visas are reserved for H-1B petitions filed on behalf of beneficiaries that holding a U.S. master's or higher degree. Section 214(g)(5)(C) of the Act. For a beneficiary to be eligible for the master's cap, their degree must have been issued by a "United States institution of higher education." *Id*.

At issue in this appeal is whether the Beneficiary's U.S. master's degree was issued by a "United States institution of higher education" as defined in section 101(a) of the Higher Education Act, 20 U.S.C. § 1001, which states the following:

(a) Institution of higher education. For purposes of this chapter, other than subchapter IV, the term "institution of higher education" means an educational institution in any State that--

> (1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of section 1091(d) of this title;
>
> (2) is legally authorized within such State to provide a program of education beyond secondary education;
>
> (3) provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;
>
> (4) is a public or other nonprofit institution; and
>
> (5) is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

II. ANALYSIS

The Petitioner contends the petition is not subject to the regular cap. Instead, it claims that by virtue of the Beneficiary's master's degree issued by [redacted] University, the petition qualifies for the master's cap exemption. The Director found otherwise and denied the petition, concluding that [redacted] University is not an institution of higher education as defined above. On appeal, the Petitioner argues that [redacted] University meets the above definition, particularly subsections (4) and (5) of 20 U.S.C. § 1001(a). First, the Petitioner argues that although [redacted] University is a for-profit university, it has been registered in Virginia as a "public benefit institution" since 2015 and therefore satisfies 20 U.S.C. § 1001(a)(4). Second, the Petitioner argues that [redacted] University is accredited by the Accrediting Council for Independent Colleges and Schools (ACICS) and therefore satisfies 20 U.S.C. § 1001(a)(5).

We disagree with both arguments and find that the Petitioner has failed to establish its eligibility for the benefit sought. The Petitioner's first argument is not supported by the evidence. The Petitioner concedes that [redacted] University is a for-profit university. Whether the State of Virginia has designated the Beneficiary's institution a "public benefit corporation" is not relevant to our application

of 20 U.S.C. § 1001(a)(4), because a private, for-profit university is by definition not a "public or other nonprofit institution."

Finding that the Petitioner's evidence is insufficient under 20 U.S.C. § 1001(a)(4) is enough to dismiss this appeal, and affirm the Director's denial of the petition. However, we further note that the Petitioner has not provided sufficient information or evidence to establish that the Beneficiary's institution received proper accreditation as required by 20 U.S.C. § 1001(a)(5). Public source information shows that the U.S. Department of Education terminated ACICS' accreditation in 2016. *See* https://www.ed.gov/acics (last visited Aug. 16, 2022). As such, [redacted] ACICS accreditation is not sufficient to demonstrate eligibility under 20 U.S.C. § 1001(a)(5).

Satisfying one of the criteria specified at 20 U.S.C. § 1001(a)(1)-(5) is not sufficient, as the Petitioner seems to imply. To the contrary, to qualify under 20 U.S.C. § 1001(a) all five criteria must be satisfied. Since the record meets the requirements of neither subsection (4) nor subsection (5), the Beneficiary's degree does not satisfy 20 U.S.C. § 1001(a), and he therefore does not qualify for the master's cap exemption described at section 214(g)(5)(C) of the Act. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.