U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 21179745

Date: SEP. 29, 2022

Appeal of Vermont Service Center Decision

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

The Petitioner seeks to extend the Beneficiary's temporary employment as a software developer 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 Vermont Service Center denied the petition, concluding that the Petitioner did not establish that it is eligible for a petition extension in accordance with the applicable provisions. On appeal, the Petitioner asserts that the Director erred.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *See* Section 291 of the Act; *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will dismiss the appeal. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

Section 214(g)(4) of the Act, 8 U.S.C. § 1184(g)(4), provides: "In the case of a nonimmigrant described in section 101(a)(15)(H)(i)(b), the period of authorized admission as such a nonimmigrant may not exceed 6 years." The regulation at 8 C.F.R. § 214.2(h)(13)(iii)(D) codifies section 106 of the American Competitiveness in American Competitiveness in the Twenty-First Century Act, Pub. L. No. 106-313, 114 Stat. 1251 (2000), as amended by the Twenty-First Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002), and it removes the six-year limitation on the authorized period of stay in H-1B visa status for certain foreign nationals whose labor certifications or immigrant petitions remain undecided due to lengthy adjudication delays.

To prevail in this matter, the Petitioner must establish that a labor certification or an I-140 petition had been pending for at least 365 days on the date the H-1B petition was filed. Upon review of the record in its totality and for the reasons set out below, we conclude that a remand is warranted.

The Petitioner filed the instant H-1B petition on March 31, 2021, and it seeks to extend the Beneficiary's H-1B status from April 5, 2021 to April 4, 2022. The Form I-140 the Petitioner claims as the basis for the requested petition extension was filed April 16, 2020 and denied October 13, 2020. The Petitioner filed a combined motion to reopen and reconsider the petition, which the Director denied on February 2, 2021. However, on April 5, 2021, the Petitioner filed a second combined motion to reopen and reconsider the petition, and the Director approved the I-140 petition on September 6, 2022. We consider approval of the I-140 petition a significant development that warrants withdrawal of the Director's denial and remand of the matter for issuance of a new decision taking this development into account.

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