



**U.S. Citizenship
and Immigration
Services**

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

In Re: 26402007

Date: APR. 10, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks to temporarily 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 Director of the Texas Service Center denied the petition pursuant to 8 C.F.R. § 214.2(h)(2)(i)(G) because the Petitioner filed more than one H-1B petition subject to the numerical limitations at section 214(g)(1)(A) of the Act (H-1B cap) on behalf of the same noncitizen in the same fiscal year. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (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 dismiss the appeal.

I. PROCEDURAL HISTORY

The Petitioner filed two H-1B petitions subject to the H-1B cap on behalf of the Beneficiary within a week of one another on June 23, 2022 and June 30, 2022. On August 2, 2022, the Director issued notices of intent to deny (NOID) for each petition. The NOIDs provided the Petitioner the opportunity to explain their legitimate business need to file more than one H-1B cap subject petition on behalf of the Beneficiary. The Petitioner withdrew its petition filed on June 30, 2022 on August 2, 2022.¹ The Petitioner responded to the notice issued in connection with its petition filed on June 23, 2022 with an

¹ The Petitioner's request for withdrawal was on their letterhead, referenced the correct receipt number, and was signed by their authorized signatory with their title. However, the request referenced a different petitioner. On appeal, the Petitioner asserts that this was typographical error. The Director acknowledged the withdrawal of the H-1B petition on September 6, 2022.

explanation and a request for premium processing service.² The Director found the Petitioner's response did not establish a legitimate business need to excuse their later submission of the H-1B cap subject petition for the same beneficiary and denied the petition. On appeal, the Petitioner reiterates their previous statements and requests an exercise of favorable discretion.

II. LEGAL FRAMEWORK

The regulation at 8 C.F.R. § 214.2(h)(2)(i)(G) prohibits multiple H-1B petitions from being filed in the same fiscal year for the same beneficiary by an employer or related entities. The regulation at 8 C.F.R. § 214.2(h)(2)(i)(G) states:

Multiple H-1B petitions. An employer may not file, in the same fiscal year, more than one H-1B petition on behalf of the same alien if the alien is subject to the numerical limitations of section 214(g)(1)(A) of the Act or is exempt from those limitations under section 214(g)(5)(C) of the Act. If an H-1B petition is denied, on a basis other than fraud or misrepresentation, the employer may file a subsequent H-1B petition on behalf of the same alien in the same fiscal year, provided that the numerical limitation has not been reached or if the filing qualifies as exempt from the numerical limitation. Otherwise, filing more than one H-1B petition by an employer on behalf of the same alien in the same fiscal year will result in the denial or revocation of all such petitions. If USCIS believes that related entities (such as a parent company, subsidiary, or affiliate) may not have a legitimate business need to file more than one H-1B petition on behalf of the same alien subject to the numerical limitations of section 214(g)(1)(A) of the Act or otherwise eligible for an exemption under section 214(g)(5)(C) of the Act, USCIS may issue a request for additional evidence or notice of intent to deny, or notice of intent to revoke each petition. If any of the related entities fail to demonstrate a legitimate business need to file an H-1B petition on behalf of the same alien, all petitions filed on that alien's behalf by the related entities will be denied or revoked.

The regulation precludes a favorable action of discretion absent showing a legitimate business need for the filing of multiple H-1B cap subject petitions for the same beneficiary. If there is no legitimate business need, filing multiple H-1B cap subject petition will result in the denial or revocation of all petitions.

III. ANALYSIS

The Petitioner's petition must be denied. The Petitioner filed two H-1B cap subject petitions for the same beneficiary in the same fiscal year without a legitimate business need to do so. And without a legitimate business need, the regulation at 8 C.F.R. § 214.2(h)(2)(i)(G) requires denial or revocation of all petitions filed by the Petitioner for the Beneficiary.

² Although the Director asserts that the Petitioner did not respond to the notice of intent to deny, the record reflects that they did in conjunction with their request for premium processing service. We withdraw the Director's comments to the contrary and consider their error harmless as it has no influence on the disposition of this matter.

The Petitioner requested a favorable act of discretion because their duplicate filing was supposedly inadvertent. Their response to the NOID acknowledged that they submitted two H-1B cap subject petition on behalf of the Beneficiary, but they stated this was unintentional. The Petitioner stated that it withdrew its petition on June 30, 2022 once it became aware of its error, and forfeited the filing fees and costs incurred in preparation.³ The Petitioner attested that the petitions they submitted were identical and were not filed in an effort to circumvent regulations or increase the chances of approval. The Petitioner's error, inadvertent as they may claim it is, is not a legitimate business need justifying duplicate H-1B cap subject filings. And the Petitioner's withdrawal of the other petition they filed for the Beneficiary did not ameliorate the situation. The regulatory prohibition applies to all H-1B cap subject petitions filed on behalf of the same beneficiary by the Petitioner in the same fiscal year. *See* 8 C.F.R. § 214.2(h)(2)(i)(G). There is no authority in the statute, regulations, or policy which permits approval of the H-1B cap subject petition under this duplicate filing scenario.

So, the Petitioner has not provided a legitimate business need to justify why it filed multiple H-1B cap subject petition on behalf of the same beneficiary in the same fiscal year. Approval of the petition is prohibited pursuant to 8 C.F.R. § 214.2(h)(2)(i)(G).

IV. CONCLUSION.

As discussed, the Petition did not identify a legitimate business need to substantiate its multiple H-1B cap subject filings for the beneficiary in the same fiscal year. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden here. The appeal must be dismissed.

ORDER: The appeal is dismissed.

³ It is irrelevant to the ultimate disposition of this matter whether the petition was withdrawn in response to the issuance of the NOID or serendipitously on the same day the NOID was issued.