U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25281655

Date: JAN. 24, 2023

Appeal of Texas 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 Texas Service Center Director denied the Form I-129, Petition for a Nonimmigrant Worker (petition), concluding that due to inconsistencies within the record, the Petitioner did not establish the Beneficiary's work location was covered by a U.S. Department of Labor certified ETA Form 9035 & 9035E, Labor Condition Application for Nonimmigrant Workers (LCA). 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 will dismiss the appeal.

The Petitioner filed the petition in February 2022. At that time, it indicated the Beneficiary's work location was on [redacted] Texas. This was reflected on both the LCA and the petition.[1] The Director issued a request for evidence (RFE) in part seeking clarification regarding the Beneficiary's work location. In response to the RFE, the Petitioner stated it was "a home-based business where it[]s employees always provide services at third party client sites . . . ." The Director noted this statement was not consistent with the information on the LCA and the petition, and they concluded it cast overall doubt about the work location, which resulted in an adverse decision on this petition.

[1] On the LCA, the Petitioner listed the [redacted] address as the place of employment in Section F.a.4. and it did not offer any other addresses. Also on the LCA in Section F.a.2., the Petitioner checked the "No" box for the statement: Indicate whether the worker(s) subject to this LCA will be placed with a secondary entity at this place of employment. On the petition, the Petitioner also failed to indicate the Beneficiary would work offsite. Under Part 5.5., they checked the "No" box to the question of whether the Beneficiary would work offsite at another company or organization's location. And on the H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement, under Section 4.1. the Petitioner checked the "No" box for the question: The beneficiary of this petition will be assigned to work at an off-site location for all or part of the period for which H-1B classification sought.

On appeal, the Petitioner now indicates they will not place this Beneficiary at a secondary entity, but instead will place her at a new location they purchased in April 2022. This information was not reflected in the Petitioner's claims when they filed the petition, nor did they mention this in their May 2022 response to the Director's RFE. This constitutes a material change and a petitioner may not make such alterations to a petition that has already been filed in an effort to make an apparently deficient petition conform to .S. Citizenship and Immigration Services requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). Additionally, a filing party must establish they are eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1). *See also Ahmed v. Mukasey*, 519 F.3d 579, 582 (6th Cir. 2008). All required forms must be properly completed and filed with any initial evidence required by applicable regulations and the form instructions. *Id.*

Finally, the Petitioner has provided inconsistent information that has an adverse impact on the veracity their claims in this petition and they have not resolved this discordant information with adequate evidence revealing which assertions are the truth. *Matter of Ho*, 19 I&N Dec. 582, 591–92 (BIA 1988) (noting it is a petitioner's responsibility to resolve inconsistencies in the record through independent and objective evidence).

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.