



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

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

In Re: 27547016

Date: JUL. 24, 2023

Appeal of California 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 California Service Center Director denied the petition, concluding that the Petitioner did not establish that the Beneficiary qualifies for an exemption from the H-1B numerical cap under section 214(g)(5) of the Act.

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

**I. LAW**

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for foreign nationals who are coming temporarily to the United States to perform services in a specialty occupation. In general, H-1B visas are numerically capped by statute. Pursuant to section 214(g)(1)(A) of the Act, 8 U.S.C. § 1184(g)(1)(A), the total number of H-1B visas issued per fiscal year (FY) may not exceed 65,000. Generally, H-1B petition beneficiaries are allocated one of these numerically-limited visa numbers and a cap number upon the petition's approval. *See* section 214(g)(3) of the Act; 8 C.F.R. § 214.2(h)(8)(ii)(A)–(B).

The regulation at 8 C.F.R. § 214.2(h)(8)(iii)(F) provides, in pertinent part, that [an H-1B Beneficiary] is not subject to the numerical limitations identified in section 214(g)(1)(A) of the Act if [he or she]

qualifies for an exemption under section 214(g)(5) of the Act. For purposes of section 214(g)(5)(A) and (B) of the Act:

(1) “Institution of higher education” has the same definition as described at section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(2) A nonprofit entity shall be considered to be related to or affiliated with an institution of higher education if it satisfies any one of the following conditions:

....

(iv) The nonprofit entity has entered into a formal written affiliation agreement with an institution of higher education that establishes an active working relationship between the nonprofit entity and the institution of higher education for the purposes of research or education, and a fundamental activity of the nonprofit entity is to directly contribute to the research or education mission of the institution of higher education.

## II. ANALYSIS

The Petitioner is a nonprofit organization dedicated to providing social services to senior citizens and people with special needs. It was founded in 2007 and has established a senior center “catering to South Asian values and culture,” which “offers a welcoming space where seniors could take yoga classes or workshops that taught better health practices, and enjoy nutritious, culturally appropriate congregate meals.” The Petitioner further indicates that its programs are “designed to foster community and friendship, stimulate mental health and physical fitness, [and] empower our elders through knowledge and encourage them to come together to creatively solve problems or advocate for their rights.”

It seeks to employ the Beneficiary as a social worker and designated the proffered position on the labor condition application (LCA) as an Occupational Information Network (O\*NET) Standard Occupation Classification (SOC) code 21-1023 “Mental Health and Substance Abuse Social Workers.” The Petitioner filed the petition in April 2022, seeking an H-1B cap exemption under section 214(g)(5) of the Act. On the instant Form I-129, H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement (Form I-129 Supplement), the Petitioner marked that it is “a nonprofit organization or entity related to or affiliated with an institution of higher education, as defined in 8 C.F.R § 214.2(h)(19)(iii)(C).” In the initial letter, the Petitioner stated that it “qualifies as a cap exempt institution under 8 C.F.R § 214.2(h)(8)(iii)(F)(2)(iv).”

The Director first issued a request for evidence (RFE), then a notice of her intention to deny the petition (NOID), explaining in each notice why the evidence provided was insufficient to establish that the Petitioner met the qualification requirements for cap exemption under 8 C.F.R § 214.2(h)(8)(iii)(F). Ultimately, the Director denied the petition, noting that the Petitioner indicated in its response to the NOID that it met the regulatory requirements as an affiliated nonprofit through its agreements with [redacted] University [S-] and [redacted] University [N-].

In denying the petition, the Director first discussed the Petitioner's relationship with N-, concluding that while the two entities shared contractual agreements calling for the Petitioner to provide services to N-, the nature of the services provided did not appear to directly contribute to N-'s higher education or research mission. As a result, the Director determined that the service agreements between the Petitioner and N- were not qualifying affiliation agreements under 8 C.F.R § 214.2(h)(8)(iii)(F)(2)(iv).

The Director then turned to the evidence regarding the Petitioner's relationship with S-, concluding the affiliation agreement between the two entities qualified under the regulation as a "formal written affiliation agreement." The Director discussed a letter authored by one of S-'s directors, who asserted that S- placed three students with the Petitioner for the purpose of receiving practical training in the years 2019 through 2022. The Director determined that without more, the Petitioner had not demonstrated that there is an active working relationship between the entities for the purposes of research or education, or that a fundamental activity of the Petitioner's organization is to directly contribute to S-'s research or education mission. *Id.*

The Director denied the petition, concluding that the Petitioner did not show that its organization is exempt from the H-1B cap pursuant to 8 C.F.R § 214.2(h)(8)(iii)(F)(2)(iv), or that an H-1B cap visa is otherwise available to the Beneficiary. *See* 8 C.F.R § 214.2(h)(8)(ii)(B).

On appeal, the Petitioner maintains that it has submitted evidence sufficient to show that it is exempt from the H-1B cap as an affiliated nonprofit through its agreements with [S-] and [N-], and that the Director erred in determining otherwise. For instance, the Petitioner contends on appeal that the Director erred in concluding that the affiliation agreements and the letter from S- were insufficient to establish that the entities enjoy an "an active working relationship . . . for the purposes of research or education. . .," as required by 8 C.F.R § 214.2(h)(8)(iii)(F)(2)(iv). In the previously submitted letter, S- explains:

By placing our graduate students [with the Petitioner] for their fieldwork practicum, our students learn "hands-on" practical public health skills addressing emerging health issues in often complex multi-cultural settings. . . . We have held a Site Affiliation Agreement with [the Petitioner] since 2019 for this purpose. We have placed three of our MPH students at [the Petitioner], whose information is as follows:

- Fall 2019 – [J-J-]
- Fall 2021 – [N-D-]
- Spring 2022 – [J-T-]

In denying the petition, the Director noted that the Petitioner did not provide adequate documentary evidence to show it was actively involved in providing training or education to S-'s students. Based on our review, it appears that evidence in the record may not be sufficient to substantiate important aspects of the training programs outlined in the submitted affiliation agreements. For instance, the Petitioner has not provided documentary evidence beyond the letter to show that individuals who are enrolled in a program of study with S-, have been placed with the Petitioner to perform fieldwork, the nature of the tasks or responsibilities that were assigned to them by Petitioner, and the duration of their fieldwork activities. This lack of documentary evidence about the placement of S-'s students with the Petitioner raises critical questions regarding whether the Petitioner has an active relationship with S-

that directly contributes to S-'s research or education mission, which the Director should consider and address on remand. *Id.* In evaluating the evidence, eligibility 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).

The Petitioner also asserts on appeal that the Director did not adequately consider submitted material about the activities that the Petitioner performs for N-, based on their contractual agreements. For instance, the Petitioner alleges that the Director concluded in the denial that the extent of the Petitioner's contractual services for N- was limited to "submit[ing] tracking data once a month for monthly reporting; participat[ing] in monthly meetings; respond[ing] to ad hoc reporting requests."

The Petitioner points to previously submitted evidence which the Director may have overlooked regarding the Petitioner's relationship with N-, such as the statements of work that outline services that the Petitioner provided in support of a "COVID-19 Disparities" project in collaboration with N- to "promote inclusion of priority populations in COVID-19 clinical trials," which involved "inform[ing] strategies to build trust and address misinformation; provide input on cultural tailoring of materials; and support reach and engagement to increase education, acceptability and uptake of COVID-19 vaccination in the communities that they serve." We agree with the Petitioner that the Director's decision did not adequately discuss the collective evidence provided in support of the Petitioner's assertions about its relationship with N-. We therefore are remanding the case to the Director for further review and to provide a sufficient explanation regarding why the evidence relating to the Petitioner's relationship with N- is insufficient so that the Petitioner more fully understands the Director's concerns.

Additionally, even if the Director ultimately determines that the Petitioner meets the requirements at 8 C.F.R. § 214.2(h)(8)(iii)(F)(2)(iv), she should also determine whether the record demonstrates that the Beneficiary's proposed employment with the Petitioner meets the requirements at 8 C.F.R. § 214.2(h)(8)(iii)(F)(4), which provides:

An H-1B beneficiary who is not directly employed by a qualifying institution, organization or entity identified in section 214(g)(5)(A) or (B) of the Act shall qualify for an exemption under such section if the H-1B beneficiary will spend the majority of his or her work time performing job duties at a qualifying institution, organization or entity and those job duties directly and predominately further the essential purpose, mission, objectives or functions of the qualifying institution, organization or entity, namely, either higher education, nonprofit research or government research. The burden is on the H-1B petitioner to establish that there is a nexus between the duties to be performed by the H-1B beneficiary and the essential purpose, mission, objectives or functions of the qualifying institution, organization or entity.

The Petitioner indicates that the Beneficiary will perform the following job duties:

[The Beneficiary] will work under the supervision of [I-'s] licensed clinical social worker to provide case management, referral services, evaluation of psychological and social needs, and development of individually tailored case plans for services. She will develop, direct, coordinate and implement a wide range of activities tailored to meet the specific needs and interests of the elderly and will be responsible for coordinating

and directing the day-to-day administration of various activities and programs designed to meet the needs of the aging population. . . .

The Director did not specifically address this important aspect in denying the petition, or in her RFE and NOID. Moreover, the Petitioner has not provided evidence sufficient to explain how the Beneficiary in performing the duties of the proffered position “*will spend the majority of [her] work time performing job duties at a qualifying institution, organization or entity and those job duties directly and predominately further the essential purpose, mission, objectives or functions of the qualifying institution*” as required by 8 C.F.R § 214.2(h)(8)(iii)(F)(4). Therefore, the Director should review the record to decide if the Petitioner has adequately demonstrated the requisite nexus between the Beneficiary’s proposed employment and *the essential purpose, mission, objectives of a qualifying institution*. *Id.*

We withdraw the Director’s decision and remand the matter for further review and entry of a new decision. On remand, the Director should review all evidence submitted to date (including the brief submitted on appeal) and analyze the Petitioner’s contentions and evidence to determine if the Petitioner is exempt from the H-1B cap pursuant to 8 C.F.R § 214.2(h)(8)(iii)(F), or that an H-1B cap visa is otherwise available to the Beneficiary. 8 C.F.R § 214.2(h)(8)(ii)(B). The Director may request any additional evidence considered pertinent to the new decision. As such, we express no opinion regarding the ultimate resolution of this case on remand.

### III. CONCLUSION

The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.