U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24898024

Date: MAR. 1, 2023

Appeal of California Service Center Decision

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

The Petitioner seeks to extend the Beneficiary's temporary employment 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 approved the Form I-129, Petition for a Nonimmigrant Worker (petition) for a shorter period than requested. 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 conclude that a remand is warranted in this case.

Section 214(g)(4) of the Act, 8 U.S.C. § 1184(g)(4), sets a six-year limitation on the period of authorized admission or stay for an H-1B nonimmigrant. However, as provided by 8 C.F.R. § 214.2(h)(13)(iii)(A), time spent outside the United States does not necessarily count when calculating the end-date of that six-year period. The regulation at 8 C.F.R. § 214.2(h)(13)(iii)(C) explains:

> *Calculating the maximum H-1B admission period.* Time spent physically outside the United States exceeding 24 hours by an alien during the validity of an H-1B petition that was approved on the alien's behalf shall not be considered for purposes of calculating the alien's total period of authorized admission under section 214(g)(4) of the Act, regardless of whether such time meaningfully interrupts the alien's stay in H-1B status and the reason for the alien's absence. Accordingly, such remaining time may be recaptured in a subsequent H-1B petition on behalf of the alien, at any time before the alien uses the full period of H-1B admission described in section 214(g)(4) of the Act.

Further details regarding this calculation, including the types of evidence that may be submitted and clarification that we may grant all, part, or none of the recapture period requested, are contained at 8 C.F.R. § 214.2(h)(13)(iii)(C)(*1*).

We agree with the Director's ultimate determination that the extension request should be approved but for a limited validity period. However, we disagree with the Director's calculation and conclude that the validity period should cover a shorter period than the one granted. The Director laid out the facts of this case, and we incorporate them here by reference. On appeal, the Petitioner generally relies on the definition provided in section 101(a)(15)(H)(i)(b) of the Act to argue that any time a beneficiary is unable to "perform" services as an H-1B or L-1 nonimmigrant, including any authorized grace periods, they should be eligible for "recapture" time. We disagree. As noted above, section 214(g)(4) of the Act establishes that "*the period of authorized admission*" for an H-1B "nonimmigrant may not exceed 6 years" and the regulations at 8 C.F.R. § 214.2(h)(13) provide further guidance related to "admission."

While absences from the United States that exceed 24 hours are eligible for recapture pursuant to 8 C.F.R. § 214.2(h)(13)(iii)(C), the Petitioner has not cited to any regulation or policy which would permit the requested recapture of time spent in the United States in a period of authorized admission. Moreover, the Petitioner appears to confuse the period of authorized admission with maintenance of status. For example, the regulation at 8 C.F.R. § 214.1(l)(2) states, in pertinent part:

> An alien admitted or otherwise provided status in . . . H-1B, . . . [or] L-1 . . . classification and his or her dependents shall not be considered to have failed to maintain nonimmigrant status solely on the basis of a cessation of the employment on which the alien's classification was based, for up to 60 consecutive days or until the end of the authorized validity period, whichever is shorter . . . .

Contrary to the Petitioner's claim, the regulation does not add "*additional* time to the statutory maximums," but rather allows the individual to maintain their status under the exact scenario the Beneficiary experienced with the early termination of his employment. Therefore, any time that the Beneficiary remained in the United States in a period of H-1B or L-1 status is to be subtracted from the statutory six year maximum.

Although we will not include every date and milestone relating to the Beneficiary's immigration status and filings, for clarity we offer information related to the Beneficiary's authorized admission in H-1B and L-1 nonimmigrant status during which he accrued time toward his six-year limit. Additionally, we will subtract any time eligible for recapture under 8 C.F.R. § 214.2(h)(13)(iii)(C). We also observe that both the Petitioner and the Director made incorrect calculations and we correct those through our below statements.[1]

The Beneficiary's total time in a period of authorized admission in L-1B status comprised 970 days.[2] Accounting for his 94 recaptured days in which he was outside the United States for a full 24-hour period, his calculable time in L-1B status was 876 days. As it relates to his time in H-1B status, his

[1] For example, we agree with the Petitioner that the Director incorrectly stated that the Petitioner's request to change status to H-4 was approved on August 20, 2021. It was actually approved from August 12, 2021, through May 15, 2023.

[2] The filing of a Form I-485, Application to Register Permanent Residence or Adjust Status, had no effect on the Beneficiary's "period of authorized admission" as an L-1B nonimmigrant as described under section 214(g)(4) of the Act.

total time in a period of authorized admission amounts to 1,010 days (from November 6, 2018 through August 11, 2021, as his request to change status to H-4 was approved on August 12, 2021). After adding these figures totaling 1,886 days, then subtracting that sum from the number of days equal to six years (2,190), the result is 304 days remaining for the Beneficiary to spend in H-1B status pursuant to this extension request, which is lengthier than the period granted by the Director. We will remand the matter to the Director to approve the petition in accordance with the above analysis.

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