U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27361002

Date: JUN. 12, 2023

Appeal of Vermont 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 Vermont Service Center denied the petition. The Director concluded that the Petitioner worked with another registrant, petitioner, agent, or other individual or entity to submit a registration to unfairly increase the chances of selection in the H-1B lottery for the beneficiary. The Director also concluded that the Petitioner's proffered job was not a specialty occupation.[1] 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. IMPROPER REGISTRATION AND INELIGIBILITY TO FILE PETITION

A. Legal Framework

The Petitioner seeks to employ the Beneficiary under the H-1B nonimmigrant classification for specialty occupations. *See* section 101(a)(15)(H)(i)(b) of the Act. The H-1B program is a numerically

[1] We will reserve our opinion regarding whether the Petitioner's proffered job is a specialty occupation because the disposition of the issue of the Petitioner's improper coordination with another entity to unfairly increase the chances of selection in the H-1B lottery for the Beneficiary is sufficient to resolve this matter and determine the outcome of this appeal. *See INS v Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach*"); see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

limited benefit. H-1B visas are numerically limited, or "capped," to 65,000 per fiscal year pursuant to section 214(g)(1)(A) of the Act, 8 U.S.C. § 1184(g)(1)(A). An annual exemption from the numerical limitations of section 214(g)(1)(A) of the Act is available under section 214(g)(5)(C), 8 U.S.C. § 1184(g)(5)(C), for beneficiaries who have earned a master's or higher degree from a U.S. institution of higher educational until 20,000 qualifying beneficiaries are exempted.

To ensure a fair and equitable allocation of the available H-1B visas in any given fiscal year, USCIS has instituted the registration requirement contained at 8 C.F.R. § 214.2(h)(8)(iii)(A)(i). A petitioner must register to file a petition on behalf of a non-citizen beneficiary electronically and a registration must be properly submitted pursuant to 8 C.F.R. § 103.2(a)(1) and the applicable form instructions to render a petitioner eligible to file an H-1B petition.

A petitioner submitting a registration is required to attest under penalty of perjury that they have not worked with or agreed to work with another registrant, petition, agent, or other individual or entity to submit a registration to unfairly increase the chances of selection for the beneficiary in that specific registration. If USCIS finds that this attestation was not true and correct (for example, that a company worked with another entity to submit multiple registrations for the same beneficiary to unfairly increase chances of selection for that beneficiary), USCIS will find that the registration was not properly submitted. This renders a petitioner ineligible to file a petition based on that registration pursuant to 8 C.F.R. § 214.2(h)(8)(iii)(A)(1).

B. Procedural and Factual History

The Petitioner submitted their H-1B registration for the Beneficiary on March 14, 2022. The Director notified the Petitioner of the selection of their registration for the Beneficiary on March 26, 2022. The Petitioner filed this petition on June 29, 2022 to temporarily employ the Beneficiary as a software quality assurance tester under section 101(a)(15)(H)(i)(B) of the Act at their principal place of business in [redacted] New Jersey.

On September 9, 2022, the Director issued a notice of intent to deny (NOID) the petition because it appeared that the Petitioner has worked with another registrant, petitioner, agent, or other individual or entity to submit multiple registrations to unfairly increase the chances of selection for the Beneficiary. The Director specifically described the following points of concern:

- The Petitioner and a separate entity, [redacted] filed H-1B cap registrations on behalf of the same 39 individual beneficiaries.
- The signatory on the Petitioner's petitions, [redacted] is an employee of [redacted]
- [redacted] website lists [redacted] as its "Director – IT Sales"
- Documentation submitted with petitions filed by [redacted] include a letter to [redacted] Inc. informing them that several of their employees have access to their principal place of business including [redacted]
- H-1B petitions filed by [redacted] and the Petitioner include documentation with identical formatting and language.

The Petitioner responded to the NOID and stated that they had not "misused any rules relating to registration and [did] not unfairly increase the chances of lottery selection" for the Beneficiary. They

stated that [redacted] employment with [redacted] had terminated as of February 27, 2022, which is prior to the date the H-1B registration was filed. They attested that they did not have an ownership, agent, or employee relationship with [redacted] They advised that [redacted] served as an officer and "Director – IT" at the Petitioner and stated that, like [redacted] the Petitioner also did not have any ownership or agency relationship with [redacted] In support they submitted a notarized letter from [redacted] memorializing the termination of [redacted] employment with [redacted], stating that they have no "ownership or agency rights with them," and claiming that they are the Petitioner's "Director of Sales – IT" since March 1, 2022. The Petitioner also submitted a master services agreement accompanied by a statement of work designated "Schedule A" corresponding to an agreement between themselves and [redacted] for their services. The Petitioner did not, however, provide any evidence, documentation, or information to address the specific points of concern raised by the Director in the NOID. The Director consequently denied the petition on November 17, 2022.

On appeal, the Petitioner substantially repeats their contention neither they nor [redacted] has any ownership or agency relationship with [redacted] They further state that they are "owned 100% by [redacted] and by no other person or entity." In support of their appeal they resubmit documentation provided in response to the NOID as well as new documents in the form of a letter from [redacted] stating that [redacted] has not been an employee of [redacted] since February 27, 2022. Once again the Petitioner provides no evidence, documentation, or information to address the specific points of concern raised by the Director in the NOID and their decision.

C. Analysis

The Director had a well-founded concern supported by unrebutted facts that the Petitioner coordinated with [redacted] to unfairly increase the chances of the selection of the Beneficiary in the H-1B lottery. The Petitioner strenuously attempts to distance themselves from any ownership or agency relationship with [redacted] But coordination between parties does not require a shared ownership or agency relationship. The attestation required of a petitioner submitting a registration requires they certify that they have not worked with, or agreed to work with, another registrant, petitioner, agent, or other individual or entity.

And even if an ownership or agency relationship between the Petitioner and [redacted] was relevant to evaluate whether the Petitioner had worked with [redacted] to unfairly increase the Beneficiary's chances of selection in the H-1B lottery, evidence in the record casts doubt on the Petitioner's statements in connection with these proceedings. For example, the Petitioner stated in the NOID response and at appeal that they had stopped working for [redacted] as of February 27, 2022. However, as the Director noted, they signed a master service agreement on behalf of the Petitioner as identified as their "Director – IT Sales" on June 28, 2021, which was more than 7 months prior to the commencement of their employment with the Petitioner.

And, upon de novo review, we have identified additional facts and inconsistencies that cast further doubt on the Petitioner's submission of a proper H-1B registration that would render it eligible to file this petition. Contrary to the Petitioner's assertions, [redacted] does not appear to be the

Petitioner's sole owner. The Petitioner's sole shareholder according to information contained the Petitioner's Form 1120-S Schedule K-1 is [redacted]

Moreover, the attorney or agent listed on the labor condition application (LCA) submitted in support of the petition is [redacted] The registrant email address listed in [redacted] H-1B registration for the Beneficiary is [redacted] Whilst it is unclear whether [redacted] is an interested third-party or an employee of the Petitioner or [redacted], it is yet another unresolved commonality that fits into a larger picture of coordination and connection between the Petitioner and [redacted]

The specific unresolved facts described by the Director loom large as they indicate a level of coordination and information sharing between the Petitioner and [redacted] beyond what could reasonably be explained as coincidence or happenstance. The Petitioner has not addressed how they and [redacted] submitted 39 registrations with the same beneficiary in common, including the Beneficiary of this petition. The record does not contain any explanation for why, purportedly months after the Petitioner's signatory [redacted] employment was terminated with [redacted] that [redacted] continued to have access to [redacted] principal place of business and was listed as [redacted] "Director – IT Sales" on their website. The Petitioner has not submitted any documentation or information to resolve the concerns raised by the identical formatting and language contained in the H-1B petitions filed by [redacted] and the Petitioner.

The misstatements, inconsistencies, and unresolved factual concerns contained in the record as it is currently composed paint a picture of considerable unreliability. Doubt cast on any aspect of a petitioner's proof may lead to doubts about the reliability and sufficiency of the remaining evidence in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

III. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.