



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

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

In Re: 36405024

Date: JAN. 29, 2025

Appeal of California Service Center Decision

Form I-129, Petition for a 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 Director of the California Service Center revoked the approval of the petition with a finding of fraud because they concluded the Petitioner submitted multiple H-1B cap registrations in concert with another registrant, petitioner, agent, or other individual or entity to unfairly increase the chance of the Beneficiary's selection. The matter is now before us on appeal pursuant to 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

### I. REVOCATION

To ensure a fair and equitable allocation of the available H-1B visas in any given fiscal year, U.S. Citizenship and Immigration Services (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, petitioner, 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).

Moreover, USCIS may revoke the approval of an H-1B petition pursuant to 8 C.F.R. § 214.2(h)(11)(iii), which states the following:

- (A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:
  - (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition; or
  - (2) The statement of facts contained in the petition...was not true and correct, inaccurate, fraudulent, or misrepresented a material fact; or
  - (3) The petition violated terms and conditions of the approved petition; or
  - (4) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or
  - (5) The approval of the petition violated paragraph (h) of this section or involved gross error.

The regulations require that USCIS provide notice consisting of a detailed statement of the grounds for revocation and provide an opportunity for the petitioner to respond to the notice of intent.

## II. ANALYSIS

The Petitioner appeals the Director's revocation of the petition's approval. Upon de novo review, we conclude that the Director did not sufficiently articulate the grounds to revoke the petition based upon the Petitioner's potential collusion with other entities to unfairly increase the chances of the Beneficiary's selection in the H-1B registration process or the related finding of fraud. For that reason, we will withdraw the Director's finding of fraud and remand the matter for entry of a new decision consistent with the analysis below.

The Petitioner filed the underlying petition on behalf of the Beneficiary seeking new employment and requesting consideration under the H-1B numerical limitation (H-1B cap). After initially approving the petition, the Director notified the Petitioner of USCIS' intent to revoke the approval of the petition, with a finding of fraud. The Director's statements in the notice of intent to revoke (ITR) notified the Petitioner of the reasons for revocation and afforded it an opportunity to respond. Specifically, the Director observed several factors upon review of H-1B cap registration data, USCIS records, open sources, and other resources that demonstrated the corporate relationship between the Petitioner and [redacted] and the coordination between the two entities to submit 68 overlapping H-1B cap registrations for the same beneficiaries. The two entities used the same IP address to submit

their cap registration, utilized the same authorized signatory, and listed the same contact phone number. Based upon this information, the Director further advised the Petitioner that USCIS determined that the multiple cap registrations submitted by these companies for the Beneficiary contain a willful misrepresentation of a material fact made to a USCIS official with the intent to deceive for the purposes of obtaining an immigration benefit, and therefore the Director intended to revoke the petition's approval with a finding of fraud.

The Director afforded the Petitioner an opportunity in their ITR to submit evidence demonstrating the Petitioner did not work with another registrant, petitioner, agent, or other individual or entity to submit a H-1B cap registration to unfairly increase the chance of selection for the Beneficiary. In its response to the ITR, the Petitioner did not rebut its relationship with [REDACTED]. And in an unsworn statement submitted with this appeal, the Petitioner's representative stated that the Petitioner decided to submit 68 overlapping H-1B registrations in concert with [REDACTED] relying on the "guidance, expertise, and experience" of the "competent" corporate immigration counsel it shared with [REDACTED]. The Petitioner also asserts that the existence of a corporate affiliation between entities that both file an H-1B registration for the same beneficiary is not sufficient to demonstrate willful misrepresentation, fraud, an intent to deceive, or collusion. The Petitioner contends in its response to the ITR and on appeal that 8 C.F.R. § 214.2(h)(2)(i)(G) permits related entities to submit multiple H-1B petitions on behalf of the same noncitizen provided that a legitimate business need exists to do so and submitted supporting evidence focused primarily on establishing a bona fide job offer and legitimate business need for the proffered position contained in the registration. The Petitioner stated that the attestation it made in submitting the H-1B registration for the Beneficiary was therefore true and correct. Accordingly, the Petitioner asserted that there is no basis in law for the revocation of the petition's approval.

The Director concluded the Petitioner's response was insufficient. The Director recognized the Petitioner and [REDACTED] legitimate job offer and business need underpinning its registrations but stated that the attestation<sup>1</sup> the Petitioner made provides a legal basis for denying the H-1B petition due to multiple registrations, "even if there is a legitimate business need and separate, bona fide job offers." The Director concluded the Petitioner worked with another registrant, petitioner, agent, or other individual or entity to submit a H-1B cap registration to unfairly increase the chance of selection for the Beneficiary, and that it therefore falsely certified the attestation it made in the submission of its H-1B registration.

On appeal, the Petitioner submits a brief and an additional affidavit from a human resources employee of [REDACTED] who acted as the authorized signatory on the H-1B registration submissions for both entities. The Petitioner repeats on appeal its assertion that the regulations permit the filing of multiple H-1B registrations by related entities when there is a legitimate business need, pursuant to 8 C.F.R. § 214.2(h)(2)(i)(G). The Petitioner also asserts on appeal that, because the H-1B registration process is currently required for H-1B petitions subject to the cap, if it is permitted for related entities to file multiple petitions in the same fiscal year when there is a legitimate business need

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<sup>1</sup> At the time of submission, the H-1B registration form required certifying the following attestation: "I further certify that this registration (or these registrations) reflects a legitimate job offer and that I, or the organization on whose behalf this registration (or these registrations) is being submitted, have not worked with, or agreed to work with, another registrant, petitioner, agent, or other individual or entity to submit a registration to unfairly increase chances of selection for the beneficiary or beneficiaries in this submission."

then there must be the same allowance for the filing of multiple registrations, otherwise the regulation would be meaningless. The Petitioner also maintains that it had no intent to deceive, that it intended to certify the attestation truthfully, and therefore did not commit fraud.

We are sympathetic to the Director's concerns regarding the submission of these H-1B registrations. The Petitioner and [redacted] submitted 68 overlapping registrations, are related entities, and have stated that they knowingly submitted the common registrations including the one in this matter. Additionally, while not part of the record considered by the Director, the affidavit submitted on appeal does not support the conclusion that the Petitioner and [redacted] had 68 separate, legitimate job offer, but rather that the entities had a total of 68 job opportunities between them. This in turn, undermines the Petitioner's claim that each of the overlapping registrations were based on legitimate job offers.

Nevertheless, we conclude that a remand is warranted in this matter because the Director did not provide sufficient notice of the specific grounds for revocation based upon this information. Instead, the Director reminded the Petitioner of the website instructions for the H-1B registration process, the attestation made in the submission of the H-1B registration, and the regulation at 8 C.F.R. § 103.2(a)(1) which requires that every benefit request be submitted in accordance with the form instructions.<sup>2</sup>

Moreover, the revocation regulations require that the Director provide a petitioner a detailed statement of the specific grounds for revocation. 8 C.F.R. § 214.2(h)(11)(iii)(A) and (B). We conclude that the Director has not done so here. Although the Director reminded the Petitioner of the attestation that it certified in submitting its H-1B registrations, the Director did not sufficiently notify the Petitioner of the grounds for revocation under 8 C.F.R. § 214.2(h)(11)(iii)(A) and (B), for example, that the approval of the petition violated the requirements of section 101(a)(15)(H) of the Act or paragraph (h) of 8 C.F.R. § 214.2 or that it involved gross error.

Additionally, we recognize that the Director has concluded that both the Petitioner and [redacted] filed their overlapping H-1B registrations based upon legitimate job offers, but that the Petitioner nevertheless did not truthfully certify the required attestation. The Director interprets the attestation to *entirely* prohibit related entities from working together to submit multiple registrations for the same beneficiary—regardless of the existence of legitimate job offers or legitimate business needs—because this will *per se* unfairly increase the chances of that beneficiary's selection. But based upon the unsworn statement submitted on appeal, the Director may wish to consider whether the evidence supports the conclusion that each of the overlapping H-1B registrations, including the one in this matter, reflects a legitimate job offer.

Separately, we also conclude that the Director did not sufficiently articulate a basis to support the finding of fraud. As outlined by the Board of Immigration Appeals, a material misrepresentation

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<sup>2</sup> At the time of submission, the H-1B registration instructions stated that: "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 registration to not be properly submitted. Since the registration was not properly submitted, the prospective petitioner would not be eligible to file a petition based on that registration in accordance with the regulatory language at 8 CFR § 214.2(h)(8)(iii)(A)(1). USCIS may deny or revoke a petition based on a registration that contained a false attestation and was therefore not properly submitted."

requires that an individual willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The term “willfully” means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). To be considered material, the misrepresentation must be one which “tends to shut off a line of inquiry which is relevant to the foreign national’s eligibility, and which might well have resulted in a proper determination that he be excluded.” *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

Accordingly, for an immigration officer to find a willful and material misrepresentation in visa petition proceedings, he or she must determine: 1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) that the misrepresentation was willfully made; and 3) that the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Matter of Kai Hing Hui*, 15 I&N Dec. at 289-90.

Additionally, the *USCIS Policy Manual* provides the framework for fraud determinations including the specific elements which must be established to sustain a finding of fraud. *See generally* 8 *USCIS Policy Manual* J.2(C), <https://www.uscis.gov/policy-manual>. This includes the immigration officer deciding that the individual or petitioner, when making the false representation, had the intent to deceive a U.S. government official authorized to act upon the request and that the U.S. government official believed and acted upon the false representation.

In the instant matter, despite the valid concerns relating to the legitimacy of the H-1B registration, the Director did not provide an adequate analysis of these factors to support the finding of fraud. The Director did not discuss the specific framework for making a fraud determination as provided by administrative case law and USCIS policy guidance and did not apply the facts of the instant matter to each of the required elements in the framework. Therefore, we will withdraw the Director’s finding of fraud.

### III. CONCLUSION

The Director’s revocation of the previously approved petition based upon the finding that the Petitioner worked with another entity or entities to submit multiple H-1B registrations to unfairly increase the chances of selection for the Beneficiary is withdrawn, as is the finding of fraud based upon this ground. The Director may choose to consider our observations as they evaluate the record. And if appropriate the Director may issue an ITR that sufficiently articulates a ground or grounds to revoke the petition. We express no opinion regarding the ultimate resolution of this case on remand.

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