U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28406821

Date: SEP. 25, 2023

Appeal of California Service Center Decision

Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker

The Petitioner, a professional manpower services business, seeks to extend the Beneficiaries' temporary employment as food preparation and serving workers[1] under the CNMI-Only Transitional Worker (CW-1) nonimmigrant classification. *See* 48 U.S.C. § 1806(d). The CW-1 visa classification allows employers in the Commonwealth of the Northern Mariana Islands (CNMI) to apply for permission to temporarily employ foreign workers who are otherwise ineligible to work under other nonimmigrant worker categories.

The Director of the California Service Center denied the petition because the Petitioner did not submit a Temporary Labor Certification (TLC) from the U.S. Department of Labor (DOL) that was valid at the time of filing. 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.

The regulation at 8 C.F.R. § 214.2(w)(4) provides the employer eligibility requirements for petitioners seeking to classify noncitizens as CW-1 transitional workers. To be considered an "eligible employer," a petitioner must obtain a TLC from DOL and consider all available United States workers for the position being filled by the CW-1 workers. 8 C.F.R. § 214.2(w)(4)(ii). For any petition requesting an employment start date on or after October 1, 2019, a petitioner is required to submit a TLC approved by DOL with the petition. 8 C.F.R. § 214.2(w)(6)(iv).

Upon consideration of the record, including the Petitioner's appeal, we adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d

[1] The Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, as initially filed, indicated that the Petitioner would employ the Beneficiaries as maids and housekeeping cleaners. The Petitioner submitted a new petition in response to the Director's request for evidence (RFE) seeking to amend the positions' job titles and duties. The Petitioner has clarified for the record that it does not intend to employ the Beneficiaries in the occupation identified on the initial Form I-129 and DOL-certified TLC.

5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

Here, although the Petitioner submitted a TLC from the DOL with its initial filing on September 22, 2022, it was for the occupation "Maids and Housekeeping Cleaners" and was not accompanied by evidence that either Beneficiary met the stated work experience requirements for that position. *See* 8 C.F.R. § 214.2(6)(ii)(E). In response to the Director's request for additional evidence demonstrating that the Beneficiaries meet the work experience requirement stated on the TLC for the maids and housekeeping cleaners position, the Petitioner submitted a new Form I-129CW, and amended the beneficiaries' job title to "Food Preparation and Serving Workers." It also submitted a new TLC for this job title that was issued by the DOL on November 7, 2022, 45 days after the filing of the petition. The Director then issued a notice of intent to deny (NOID) and provided the Petitioner the opportunity to submit a TLC for the position of food preparation and serving workers that was certified prior to the date of filing. The Petitioner did not submit this evidence in response to the NOID. Accordingly, the Director denied the petition because the Petitioner did not submit a TLC that was both valid for the offered job and certified by the DOL as of the date of filing.

On appeal, the Petitioner re-submits the TLC certified by the DOL on November 7, 2022. It explains that the delay in processing of the TLC was "beyond the petitioner's and beneficiary control," maintains that all other eligibility requirements have been met, and requests that the petition be approved.

However, as noted by the Director, eligibility for CW-1 transitional worker employment must be established as of the date of filing the Form I-129CW. *See* 8 C.F.R. § 103.2(b). To establish eligibility, the Petitioner must submit a DOL-certified TLC with the petition. *See* 8 C.F.R. § 214.2(w)(4)(ii) and (w)(6)(iv). Accordingly, the TLC must have been approved prior to filing. Here, because the Petitioner did not submit an approved TLC for the position at the time of filing, the petition cannot be approved.

For the reasons discussed, the appeal will be dismissed, and the petition will remain denied.

ORDER: The appeal is dismissed.