



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

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

In Re: 21169737

Date: APR. 11, 2022

Appeal of Vermont Service Center Decision

Form I-129, Petition for 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 Vermont Service Center Director denied the Form I-129, Petition for a Nonimmigrant Worker, concluding that the Petitioner filed more than one H-1B petition for this Beneficiary during fiscal year 2022. In her decision, the Director considered the Petitioner's explanation that although they filed two petitions for the same Beneficiary, that was a result of an error by their attorney. 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 will dismiss the appeal.

Upon review of the entire record, for the reasons set out below, we have determined that the Petitioner filed more than one H-1B petition for this Beneficiary during the same fiscal year in violation of 8 C.F.R. § 214.2(h)(2)(i)(G), which states in pertinent part:

*Multiple H-1B petitions.* An employer may not file, in the same fiscal year, more than one H-1B petition on behalf of the same [foreign national] if the [foreign national] is subject to the numerical limitations of section 214(g)(1)(A) of the Act or is exempt from those limitations under section 214(g)(5)(C) of the Act. . . . Otherwise, filing more than one H-1B petition by an employer on behalf of the same [foreign national] in the same fiscal year will result in the denial or revocation of all such petitions. If USCIS believes that related entities (such as a parent company, subsidiary, or affiliate) may not have a legitimate business need to file more than one H-1B petition on behalf of the same [foreign national] subject to the numerical limitations of section 214(g)(1)(A) of the Act or otherwise eligible for an exemption under section 214(g)(5)(C) of the Act, USCIS may issue a request for additional evidence or notice

of intent to deny, or notice of intent to revoke each petition. If any of the related entities fail to demonstrate a legitimate business need to file an H-1B petition on behalf of the same [foreign national], all petitions filed on that [foreign national's] behalf by the related entities will be denied or revoked.

Additionally, the fact that the Petitioner withdrew one of those petitions after the Director issued an Intent to Deny the petitions does not absolve them of the multiple filing bar. As mentioned, the bar requires all petitions filed on behalf of the foreign national to be denied or revoked. 8 C.F.R. § 214.2(h)(2)(i)(G); *see also* 8 C.F.R. § 103.2(b)(15). We note that the Petitioner does not identify a discretionary authority by which we may waive this requirement.

In consideration of the entire record, including the evidence submitted and arguments made on appeal, we adopt and affirm the Director's ultimate determination. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623, 624 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994)); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) (“[I]f a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings” provided the tribunal's order reflects individualized attention to the case).

In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden here, and the petition will remain denied.

**ORDER:** The appeal is dismissed.