



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

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

In Re: 21181300

Date: APR. 28, 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 violated the general prohibition on filing multiple H-1B petitions for the same Beneficiary in the same fiscal year under 8 C.F.R. § 214.2(h)(2)(i)(G). 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.

I. LEGAL FRAMEWORK

The regulation prohibiting the filing of multiple H-1B petitions at 8 C.F.R. § 214.2(h)(2)(i)(G) 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.

II. ANALYSIS

In this scenario, the Petitioner filed two H-1B petitions due to what they characterize as confusion emanating from U.S. Citizenship and Immigration Services (USCIS) relating to the correct address they should use to file petitions on certain dates. The first form of evidence the Petitioner relied upon originated from USCIS' Alerts portion of our website, which we were able to verify.¹ The second form of evidence the Petitioner relied on contains text indicating that it originated from an external entity. This second document contains mailing information that does not align with the material on the USCIS website.

We also note the procedural history relating to the petition before us on appeal, which we will refer to as Petition 1. The Petitioner filed Petition 1, and after the Director discovered the multiple petitions issue, they issued a notice of intent to deny (NOID) on this petition, then mistakenly applied the withdrawal request for the second petition (Petition 2) to this petition. The Director acknowledged the withdrawal request and considered Petition 1 to have been withdrawn. The Director noted its mistake and reopened Petition 1 then ultimately denied Petition 1 because of the multiple filing issue. We offer a chronological timeline of events for clarity:

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| March 23, 2021 | The date the Petitioner submitted the Beneficiary's registration for possible selection toward the fiscal year 2022 H-1B numerical cap projections. |
| March 27, 2021 | The date USCIS notified the Petitioner that their registration for the Beneficiary was selected. Within that notice, USCIS informed the Petitioner that they were eligible to file a corresponding H-1B petition between April 1, 2021, and June 30, 2021. |
| April 1, 2021 | The date the H-1B cap petition filing season opened in which the Petitioner was eligible to file an H-1B petition on the Beneficiary's behalf. |
| June 14, 2021 | On USCIS' Alerts portion of its website, the date the agency posted instructions for addresses in which to mail various types of filings to the Vermont Service Center. |
| June 17, 2021 | According to a USCIS notice, the date the agency received Petition 1. This was confirmed by a United Parcel Service (UPS) document that the Petitioner provides on appeal as exhibit 5. |
| June 17, 2021 | The date on the document from the external entity that contained information conflicting with the USCIS website regarding where to mail documentation to the Vermont Service Center. |
| June 30, 2021 | The date USCIS sent a notice to the Petitioner reflecting that the agency received Petition 1. |
| June 30, 2021 | The H-1B cap petition filing deadline date. |

¹ *Vermont Service Center Address Change*, U.S. Citizenship and Immigration Services (Apr. 25, 2022), <https://www.uscis.gov/news/alerts/vermont-service-center-address-change>.

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| June 30, 2021 | According to a USCIS notice, the date the agency received Petition 2. |
| July 14, 2021 | The date the Petitioner claims that they received the June 17, 2021, USCIS notice that the agency had received Petition 1. |
| July 16, 2021 | The date USCIS sent a notice to the Petitioner reflecting that the agency received Petition 2. |
| July 30, 2021 | The date the Petitioner claims that they received the July 16, 2021, USCIS notice that the agency had received Petition 2. |
| August 12, 2021 | The date the Petitioner claims that they requested withdrawal of Petition 2. |
| August 25, 2021 | The date USCIS issued a NOID on Petition 1. |
| August 31, 2021 | The date Petitioner's counsel claims they received the NOID. |
| September 13, 2021 | The date of the physical USCIS receipt stamp for Petition 2 withdrawal request. |

Within the appeal, the Petitioner asserts that the Director erred in refusing to accept is explanation for the multiple filings. Additionally, the Petitioner states that due to the conflicting filing address information it was forced to file Petition 2 with USCIS on the last possible date to file an H-1B petition for the fiscal year 2022 cap. When the Petitioner made that decision to file Petition 2, it relied on one form of evidence that originated from USCIS, and one from an external entity. We note that the information originating from the agency's website should be considered as reliable relating to the address in which to mail documents.

However, regarding the second form of evidence originating from an external entity, this appears to be an email, but it does not contain any recipient information in the "To:" field. Further, it does not appear to be communication from USCIS to the Petitioner, to their counsel, or even to the public. This external entity document contained information that conflicted with USCIS' website. Additionally, we were unable to confirm the information within the second form of evidence on USCIS' Alerts website. Therefore, the Petitioner has not demonstrated that this email was a form of communication to them, or to the public in general, that they should have relied upon. Consequently, we do not view their basis for submitting the second petition to be one that is the fault of the agency. The Petitioner has not established that confusion created from an external entity document—one that was not presented to the public or the Petitioner from USCIS—should serve as a sufficient basis to overcome the Director's adverse decision.

Even setting that aside, we conclude that the petition should remain denied. The Petitioner filed Petition 2 on June 30, 2021, and claims they received the notice that Petition 1 was accepted for filing on July 14, 2021. The Petitioner further claims that they waited more than four weeks to attempt to rectify the multiple H-1B petition filings by requesting the withdrawal of Petition 2 on August 12, 2021. However, they did not indicate whether August 12th was the date they mailed the request or the date that USCIS received it.

And the Petitioner does not offer evidence of the actual date that USCIS received their withdrawal request. The physical receipt stamp reflected on the parcel for the withdrawal request was dated September 13, 2021. Although the withdrawal request letter within that parcel was dated August 5, 2021, again the Petitioner did not offer evidence reflecting the date that it mailed the material, nor the date that USCIS received this request. As the Petitioner sent this material via UPS next day air, and

the Director receipt stamped it on September 13th, this does not corroborate the Petitioner's claim that it sent the withdrawal request on August 12, 2021.

Additionally, the Director issued the NOID on August 25th and the Petitioner claims it received it on August 31st. Therefore, the Petitioner has not established that it attempted to rectify the multiple H-1B petition filings issue until well after it received the NOID. The fact that the Petitioner withdrew one of those petitions after the Director issued a NOID on the petition does not absolve them of the multiple filing bar. *See* 8 C.F.R. § 103.2(b)(15). 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). We note that the Petitioner does not identify a discretionary authority by which we may waive this requirement.

After reviewing the record, we conclude that subsequent to the Petitioner filing two petitions for the same individual who was subject to the H-1B cap within the same fiscal year—although it withdrew one of those petitions after the Director raised the issue in a NOID—that late-performed act did not relieve it of performing a prohibited act. Accordingly, the Petitioner has not overcome the rebuttable presumption posed by 8 C.F.R. § 214.2(h)(2)(i)(G), and approval of the petition is therefore prohibited.

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.