



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

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

In Re: 19926511

Date: AUG. 22, 2022

Appeal of Nebraska Service Center Decision

Form 1-129, 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 Nebraska Service Center Director approved the petition but denied the Beneficiary's request to extend his nonimmigrant status because the Petitioner did not file the petition before the expiration of the Beneficiary's status. Following that decision, the Petitioner filed a combined motion to reopen reconsider the denial of the Beneficiary's extension of H-1B status request. The Director denied the motions.¹

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*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will reject the appeal.

Petitioners seeking H-1B status currently use one form to request a petition extension, extension of stay, and change of status. However, these are still separate determinations. 8 C.F.R. § 214.2(h)(14); 8 C.F.R. § 214.1(c); 8 C.F.R. § 248.3(a); 8 C.F.R. § 214.2(h)(15)(i). Thus, 8 C.F.R. § 214.2(h)(14) deals only with H-1B petition extensions, 8 C.F.R. § 214.1(c) relates solely to extension of stay requests, and 8 C.F.R. § 248.3(a) addresses change of status requests to H-1B classification. There is no provision in the regulations for an appeal from a denial of an extension of stay request. See 8 C.F.R.

¹ We acknowledge the Director's erroneous statement that the Petitioner could appeal the decision to our office. However, as discussed, we have no jurisdiction over the denial of an extension of stay request. 8 C.F.R. § 214.1(c)(5) ("Where an applicant or petitioner demonstrates eligibility for a requested extension, it may be granted at the discretion of USCIS. The denial of an application for extension of stay may not be appealed"). While we acknowledge the Director's error, it does not change the fact that we have no jurisdiction over this appeal. If the Petitioner desires the Director to reconsider its extension of stay request, the Petitioner must file a motion to the Director directly.

§§ 214.1(c)(5), 248.3(g); *see also* DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003).

The authority to adjudicate appeals is delegated to us by the Secretary of the U.S. Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The regulations limit our jurisdiction over petitions for temporary workers to those described under 8 C.F.R. §§ 214.2 and 214.6. We therefore have no jurisdiction over this matter and consequently will address neither (1) the Director's determination regarding the Beneficiary's status, nor (2) the claims made on appeal contesting that determination. As there is no legal basis for our jurisdiction over the Petitioner's request, the appeal must be rejected.

ORDER: The appeal is rejected.