U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22972418

Date: DEC. 14, 2022

Appeal of California Service Center Decision

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

The Petitioner, a tour agency, seeks to employ and extend the temporary employment of the Beneficiaries as tour guides 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, concluding that the Beneficiaries are ineligible for the CW-1 classification since the Petitioner did not provide sufficient evidence that the Beneficiaries were in a lawful immigration status under 8 C.F.R. § 214.2(w)(1)(vi). On appeal, the Petitioner submits additional evidence.

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 dismiss the appeal.

Upon consideration of the record—including the arguments made on 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 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)."

The Director noted that because the Petitioner submitted signed requests for leave without pay from each Beneficiary's prior employer, each one failed to maintain CW-1 status and therefore none were lawfully present in the CNMI when the current petition was filed. On appeal, the Petitioner explains that because the COVID-19 pandemic greatly affected the tourism industry in CNMI and many businesses closed or reduced hours, the Beneficiaries' gap in employment is due to "extraordinary circumstances beyond anybody's control." On appeal, each Beneficiary submits a statement explaining the reason they were granted leave without pay from the previous employer during the pandemic.

While we acknowledge the pandemic's economic impact, the Petitioner did not provide sufficient evidence to establish that the Beneficiaries were lawfully present in the CNMI at the time the petition was filed. Further, though USCIS implemented special flexibilities on account of the current COVID-19 to allot additional time to file an appeal or motion (e.g., USCIS Alert, "USCIS Extends Flexibility for Responding to Agency Requests," (Mar. 30, 2022), https://www.uscis.gov/newsroom/alerts/uscis-extends-flexibility-for-responding-toagency-requests-1), the requirement for CW-1 beneficiaries to maintain lawful status under 8 C.F.R. § 214.2(w)(1)(vi) did not change.

As indicated in the Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker instructions, the petition requesting an extension of stay for a beneficiary in the CNMI may only be filed if the validity of the original petition has not expired. The instructions further note that the petition must be filed with evidence that the beneficiary continuously maintained the terms and conditions of their CW-1 status. As noted, the Petitioner did not provide evidence to establish the Beneficiaries were employed and maintaining lawful CW-1 status prior to filing the instant petition. Therefore, the record of proceedings does not demonstrate that the Beneficiaries are eligible for CW-1 classification.

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.