U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29067772

Date: DEC. 21, 2023

Appeal of Texas Service Center Decision

Form I-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 nonimmigrant 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 Director of the Texas Service Center denied the petition, concluding the Petitioner willfully perpetrated a fraud by misrepresenting the terms and condition of their proffered job opportunity. 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.

I. FRAUD AND WILLFUL MISREPRESENTATION

The Petitioner filed the H-1B petition for the Beneficiary to undertake the position of "BI Consultant II," a purported specialty occupation. In support, the Petitioner submitted documentation entitled "Churn Prediction using AI" and "Master Data Management" and represented in their supporting letter that the Beneficiary would be working on both these projects from their headquarters location in [redacted] Texas. During an administrative site visit, the Petitioner's representative was unable to provide evidence that the "Master Data Management" project documentation related to a proprietary, original, or genuine project that the Petitioner would undertake with the Beneficiary's services. In other words, the Petitioner's did not submit evidence or documentation to demonstrate "Master Data Management" project was not plagiarized and fraudulent. So, the Director issued a notice of intent to deny. In response, the Petitioner contended the legitimacy of the "Master Data Management" was not a material consideration to evaluate whether the Petitioner had proffered a bona fide specialty occupation, citing *ITServe Alliance, Inc. v Cissna*, 443 F.Supp.3d 14 (D.D.C. 2020) and the unreported

case *United States of America v. Namrata Patnaik and Kartiki Parekh*, No. 22-cr-00014-BLF, 2023 WL 1111829 (N.D. Cal. 2023). On appeal, the Petitioner and their counsel do not rebut nor do they submit evidence to rebut the falsity of the fraudulent and plagiarized evidence. Instead they repeat their assertion that the existence of the project described in the fraudulent and plagiarized evidence they submitted is not a material consideration for us to consider when we evaluate the Petitioner's eligibility for the H-1B petition. We do not agree.

It is clear in the record that the Petitioner perpetrated a fraud when they willfully misrepresented the terms and conditions of their "BI Consultant II" position with fraudulent and plagiarized project documentation. "Willful" means knowingly and intentionally, with awareness that the opposite of what is represented is the truth. *See Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). A material misrepresentation is a willful material misstatement by an individual to a government official for the purpose of obtaining an immigration benefit for which they would otherwise be ineligible. *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). When it occurs, a material misrepresentation shuts off a line of inquiry which is relevant to determining the eligibility for the benefit.

Based on our de novo review, we will adopt and affirm the Director's decision that the Petitioner submitted plagiarized evidence in support of the existence of a bona fide specialty occupation job opportunity, willfully misrepresenting the terms and conditions of the proffered job opportunity and thereby perpetrated a fraud. Our authority over USCIS service centers, the office that adjudicated this nonimmigrant petition, is comparable to the relationship between a court of appeals and a district court. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Prado-Gonzalez v. INS,* 75 F.3d 631, 632 (11th Cir. 1996) (joining "every court of appeals that has considered this issue" holding that an appellate body may affirm the lower court's decision for the reasons set forth therein); *Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Gomez-Mejia v. INS,* 56 F.3d 700, 702 (5th Cir. 1995). We may adopt and affirm the decision below when individualized consideration is afforded to the matter. *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 long as they give "individualized consideration" to the case).

The Director gave individualized consideration to the evidence the Petitioner submitted with their initial petition and their response to the Director's NOID.[1] We note the clear and unambiguous facts recited by the Director in their decision and agree with their well-reasoned conclusion. Contrary to the assertions of the Petitioner and Petitioner's counsel, the Petitioner first submitted fraudulent and plagiarized evidence with their petition and not in connection with the queries raised during an administrative site visit. And even if the fraudulent plagiarized evidence was submitted for the first time in connection with an administrative site visit, we would still agree with the Director's conclusion that in submitting the fraudulent and plagiarized evidence the Petitioner willfully misrepresented the nature of their proffered specialty occupation job opportunity and thereby perpetrated a fraud. The Form I-129 filing instructions require denial of a petition and any other immigration benefit when a petitioner knowingly and willfully falsifies or conceals a material fact or submits a false document.

[1] While we may not discuss every document submitted, we have reviewed and considered each one.

And contrary to the Petitioner's assertions, the court in *ITServe Alliance, Inc. v Cissna*, 443 F.Supp.3d 14 (D.D.C. 2020) most relevantly only reversed USCIS policy *requiring proof* of non-speculative work assignments. The court did not prohibit USCIS from evaluating documentation provided by a petitioner on their own volition in support of their petition, as is the case here, to ascertain whether it is competent and credible evidence supporting approval of the petition.

Moreover the unreported case the Petitioner cited, *United States of America v. Namrata Patnaik and Kartiki Parekh*, No. 22-cr-00014-BLF, 2023 WL 1111829 (N.D. Cal. 2023), is distinguishable from the matter before us. The facts in that dispute arose prior to the court's decision in *ITServe Alliance*. So the fraudulent documents at issue in that case were submitted whilst the policy reversed by the court in *ITServe Alliance* was in effect. In the case here, the petition was filed after *ITServe Alliance* directed USCIS to reverse its policy requiring proof of non-speculative work assignment. The Petitioner introduced the fraudulent and plagiarized project documentation in support of their petition of their own volition. In any event, we are not bound to follow the unpublished decision of a United States district court. *See Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993).

When the Petitioner signed part 7 of Form I-129, they certified under penalty of perjury that they reviewed the petition and that all the information contained in the petition, including the supporting documents, is complete, true, and correct. The Petitioner's certification under penalty of perjury was without foundation as they submitted incomplete, untrue, and incorrect information in the form of fraudulent and plagiarized documentation misrepresenting the nature of their proffered purported specialty occupation position. The Director correctly concluded the Petitioner perpetrated a fraud when they willfully misrepresented the terms and conditions of their "BI Consultant II" position with fraudulent and plagiarized project documentation.

II. FURTHER INELIGIBILITY

The Petitioner's misrepresentations directly undercut their eligibility for approval of the nonimmigrant H-1B petition. However, even if we were to put the dispositive issue and considerably negative factor of the Petitioner's willful perpetration of a fraud and misrepresentation of plagiarized and fraudulent materials as genuine documentation in support of their eligibility for approval of the H-1B petition, we would still conclude that the instant petition is unapprovable upon de novo review because the Petitioner has not demonstrated statutory eligibility for the H-1B nonimmigrant classification.

A. Legal Framework

The Act at Section 214(i)(1), 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires: (A) the theoretical and practical application of a body of highly specialized knowledge, and (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) is a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) adds a non-exhaustive list of fields of endeavor to the statutory definition. And the regulation at 8 C.F.R. § 214.2(h)(4)(iii) requires that the proffered position must also meet one of the following criteria to qualify as a specialty occupation:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The statute and the regulations must be read together to make sure that the proffered position meets the definition of a specialty occupation. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statue as a whole is preferred); *see also COIT Independence Joint Venture v. Fed. Sav. And Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). Considering the statute and the regulations separately leads to scenarios where a Petitioner satisfies a regulatory factor but not the definition of specialty occupation contained in the statute. *See Defensor v. Meissner*, 201 F.3d 384, 387 5th Cir. 2000). The regulatory criteria read together with the statute gives effect to the statutory intent. *See* Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 56 Fed. Reg. 61111, 61112 Dec. 2, 1991).

So we construe the term "degree" in 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position supporting the statutory definition of specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). USCIS' application of this standard has resulted in the orderly approval of H-1B petitions for engineers, accountants, information technology professionals and other occupations, commensurate with what Congress intended when it created the H-1B category.

And job title or broad occupational category alone does not determine whether a particular job is a specialty occupation under the regulations and statute. The nature of the Petitioner's business operations along with the specific duties of the proffered job are also considered. We must evaluate the employment of the individual and determine whether the position qualifies as a specialty occupation. *See Defensor*, 201 F.3d 384. So a Petitioner's self-imposed requirements are not as critical as whether the position the Petitioner offers requires the application of a theoretical and practical body of knowledge gained after earning the required baccalaureate or higher degree in the specific specialty required to accomplish the duties of the job.

By regulation, the Director is charged with determining whether the petition involves a specialty occupation as defined in section 214(i)(1) of the Act. 8 C.F.R. § 214.2(h)(4)(i)(B)(2). The Director may request additional evidence in the course of making this determination. 8 C.F.R. § 103.2(b)(8). In addition, a petitioner must establish eligibility at the time of filing the petition and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1).

B. Analysis

The proffered position does not meet the statutory or regulatory definition of the term "specialty occupation." The Petitioner has not satisfied the requirement that the proffered position require the theoretical and practical application of a body of specialized knowledge and that the position requires attainment of a bachelor's degree in the specific specialty to perform the job duties.

The record of proceedings contains the Petitioner's stated requirements for the proffered position. The Petitioner states that they accept among numerous other degrees a bachelor's degree in business administration, with no further specialization, as a minimum qualification for entry into the proffered position. If a position is a "specialty occupation" under the statute and regulations, it is one which involves a "body of highly specialized knowledge" attained after completing a bachelor's degree or higher in a "specific specialty." A general degree requirement like a bachelor's degree in business administration, standing alone without any further specialization, is not a specialty. And this excludes any proffered position accepting such a degree as a minimum requirement for entry into the position from consideration as a specialty occupation. A bachelor's degree in business administration without further specialization is so broad that it could apply to a position in finance as well as general business operations and management in a variety of endeavors. So it cannot provide an individual with the "body of highly specialized knowledge" required to perform the duties of a specialty occupation.

In accordance with the statutory and regulatory requirements, the agency has consistently disfavored a general-purpose bachelor's degree in business administration with no additional specialization. *See Matter of Ling*, 13 I&N Dec. 35 (Reg'l Comm'r 1968); *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558 (Comm'r 1988); *Matter of Caron Int'l*, 19 I&N Dec. 791 (Comm'r 1988). Even after Congress revamped the H-1B program as part of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, the agency's concerns with a general-purpose bachelor's degree in business administration with no additional specialization continued. *See e.g. Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151 (D. Minn. 1999); *2233 Paradise Road, LLC v. Cissna*, No. 17–cv–01018–APG–VCF, 2018 WL 3312967 (D. Nev., July 3, 2018); *XiaoTong Liu v. Baran*, No. 18-00376-JVS, 2018 WL 7348851 (C.D. Cal., Dec. 21, 2018); *Parzenn Partners v. Baran*, No. 19-cv-11515-ADB, 2019 WL 6130678 (D. Mass., Nov. 19, 2019); *Xpress Group v. Cuccinelli*, No. 3:20-CV-00568-DSC, 2022 WL 433482 (W.D.N.C. Feb. 10, 2022).

As the First Circuit Court of Appeals explained in *Royal Siam*, 484 F.3d at 147:

> The courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify granting of a petition for an H-1B specialty occupation visa. *See e.g., Tapis Int'l v. INS*, 94 F. Supp.2d 172, 175-76 (D. Mass. 2000); *Shanti*, 36 F.Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: elsewise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

A bachelor's degree in business administration with no further specialization is not a degree in a specific specialty. And the fact that the Petitioner would accept such a degree as a minimum qualification for entry to the proffered position does not satisfy the statutory and regulatory definitions of specialty occupation. So the Petition is unapprovable as filed irrespective of the Petitioner's willful misrepresentation perpetrating a fraud by submitting fraudulent and plagiarized project documentation.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons. 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.