



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

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

In Re: 25385250

Date: JUN. 09, 2023

Appeal of California 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 California Service Center denied the petition, concluding that the record did not establish that the Beneficiary was qualified to perform the duties of the proffered position by meeting at least one of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(C). 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.

On February 10, 2023, we issued a notice of intent to dismiss (NOID) the appeal, advising the Petitioner that U.S. Citizenship and Immigration Services (USCIS) records indicated a later petition filed by the Petitioner on behalf of the Beneficiary had been approved, and that the Beneficiary had been admitted to the United States in H-1B status pursuant to that petition. We instructed the Petitioner to respond to the NOID with a letter stating their intention regarding the appeal or request withdrawal of the appeal if they desired to no longer proceed with the appeal.

The NOID informed the Petitioner it had 33 days during which to respond to our notice. However, the Petitioner did not respond to the notice within the allotted timeframe. We may deny a benefit request as abandoned, deny it based on the record, or deny it for both reasons if a petitioner does not

respond to a NOID by the required date. 8 C.F.R. § 103.2(b)(13)(i). Because the Petitioner did not respond to our request within the time permitted, we will dismiss the appeal as abandoned.¹

ORDER: The appeal is dismissed.

¹ The Petitioner made no response despite USCIS providing an additional 60 days during which to respond in accordance with USCIS' COVID-19 flexibilities announced on May 1, 2020.