



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

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

In Re: 28510836

Date: OCT. 04, 2023

Appeal of Vermont 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 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 Director of the Vermont Service Center denied the petition, concluding the record did not establish that the Petitioner filed more than one H-1B petition subject to the numerical limitations at section 214(g)(1)(A) of the Act (H-1B cap) on behalf of the same noncitizen in the same fiscal year. 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. PROCEDURAL HISTORY

The Petitioner filed two H-1B petitions subject to the H-1B cap on behalf of the Beneficiary within two weeks of one another on June 14, 2022 and June 27, 2022. On July 27, 2022 and July 28, 2022 the Director issued notices of intent to deny (NOID) for each petition. The Petitioner claims that it submitted a timely response to the Director's NOIDs on August 8, 2022.¹ The Director denied both petitions, including the one for which the Petitioner filed this appeal, on November 16, 2022.² The

¹ We will exercise our favorable discretion and consider the evidence the Petitioner submits for the first time on appeal. Nevertheless, we will dismiss the appeal for the reasons we discuss in our decision.

² The Petitioner states on appeal that they intended to file a motion to reopen in connection with the Director's decision to deny the petition filed on June 14, 2022. The Petitioner indicated that they wished to withdraw the petition. USCIS granted the motion and the Director acknowledged the withdrawal of the June 14, 2022 petition on May 22, 2023.

Director concluded the Petitioner submitted multiple H-1B cap subject petitions for the same beneficiary in the same fiscal year and denied the petition pursuant to 8 C.F.R. § 214.2(h)(2)(i)(G). On appeal, the Petitioner reiterates its previous statements describing the facts and circumstances that resulted in filing of multiple cap subject H-1B petitions for the same Beneficiary in the same fiscal year.

II. LEGAL FRAMEWORK

The regulation at 8 C.F.R. § 214.2(h)(2)(i)(G) prohibits multiple H-1B petitions from being filed in the same fiscal year for the same beneficiary by an employer or related entities. The regulation at 8 C.F.R. § 214.2(h)(2)(i)(G) states:

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 alien if the alien 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. If an H-1B petition is denied, on a basis other than fraud or misrepresentation, the employer may file a subsequent H-1B petition on behalf of the same alien in the same fiscal year, provided that the numerical limitation has not been reached or if the filing qualifies as exempt from the numerical limitation. Otherwise, filing more than one H-1B petition by an employer on behalf of the same alien 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 alien 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 alien, all petitions filed on that alien's behalf by the related entities will be denied or revoked.

The regulation precludes a favorable action of discretion if a petitioner files multiple H-1B cap subject petitions for the same beneficiary. And, in the case of multiple petitions filed by related entities for the same beneficiary in the same fiscal year, filing multiple H-1B cap subject petitions will result in the denial or revocation of all petitions unless a petitioner demonstrates a legitimate business need.

III. ANALYSIS

The Petitioner's petition must be denied. The Petitioner filed two H-1B cap subject petitions for the same beneficiary in the same fiscal year. So the regulation at 8 C.F.R. § 214.2(h)(2)(i)(G) requires denial or revocation of all petitions filed by the Petitioner for the Beneficiary.

The Petitioner requested a favorable act of discretion because it filed duplicate cap subject H-1B petitions for the same Beneficiary in the same fiscal year in anticipation of rejection its earlier filed petition accompanied by an unsigned but certified ETA 9035E, Labor Condition Application. The explanation that accompanied the later-filed petition for which this appeal is filed and evidence the Petitioner submitted in the appeal itself acknowledged that it submitted two H-1B cap-subject petitions

on behalf of the Beneficiary in the same fiscal year. The Petitioner states that it could not withdraw the earlier filed petition because the petition had not been receipted by USCIS when it filed the petition for which this appeal is filed. The Petitioner explains that it made numerous efforts to notify USCIS of the reasons why it submitted duplicate cap-subject petitions in the same fiscal year for the same beneficiary. The Petitioner also stated it had subsequently withdrawn its earlier filed petition and requested that the later filed petition be adjudicated in the ordinary course and ultimately approved. But the Petitioner's withdrawal of the other petition it filed for the Beneficiary, even if the withdrawal would have accompanied the filing of the petition for which this appeal was filed, would not ameliorate the matter before us. The regulatory prohibition applies to all H-1B cap-subject petitions filed on behalf of the same beneficiary by a petitioner in the same fiscal year irrespective of the reason. *See* 8 C.F.R. § 214.2(h)(2)(i)(G). There is no authority in the statute, regulations, or policy which permits approval of the H-1B cap subject petition under this duplicate filing scenario. So, approval of the petition is prohibited pursuant to 8 C.F.R. § 214.2(h)(2)(i)(G) and we must dismiss the appeal.

IV. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden here. The appeal must be dismissed.

ORDER: The appeal is dismissed.