



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

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

In Re: 33421193

Date: SEP. 17, 2024

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 file a petition with U.S. Citizenship and Immigration Services (USCIS) 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 California Service Center denied the Petitioner's extension petition and the request to extend the Beneficiary's stay in H-1B status, concluding that the Beneficiary has not maintained status and that the record did not establish that a bona fide job offer exists for the Beneficiary to be employed in a specialty occupation. The matter is now before us on appeal pursuant to 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

The Director concluded that the Beneficiary violated his H-1B status by working for an organization other than the Petitioner and for which the Beneficiary did not have authorization from USCIS to be employed. These findings are based upon the Beneficiary acting as the Chief Financial Officer (CFO) of and signatory for an organization that filed an H-1B petition for the Beneficiary's wife. A USCIS investigation concluded that this H-1B petition contained false or inaccurate information and misrepresentations of material facts. The Director therefore determined that the Beneficiary engaged in unauthorized employment, failed to comply with the conditions of his status, and failed to maintain his status. Based upon these findings, the Director denied the instant petition, finding that the Petitioner did not sufficiently establish that a bona fide job offer exists for the Beneficiary such that the Beneficiary will be employed in a specialty occupation.

On appeal, the Petitioner asserts that the Beneficiary did not engage in unauthorized employment, did not fail to maintain his H-1B status, and that the proffered position in the Petitioner's extension petition represents a bona fide job offer. The Petitioner also asserts that even if the H-1B petition for the Beneficiary's wife involved fraudulent conduct, that is not relevant to the adjudication of this petition.

First, regarding the Director's decision to deny the H-1B petition based upon the conclusion that there is no bona fide job offer for the Beneficiary, we will remand the matter for a decision consistent with the following analysis.

Section 101(a)(15)(H)(i)(b) of the Act defines an H-1B nonimmigrant as a noncitizen "who is coming temporarily to the United States to perform *services . . . in a specialty occupation* described in section 214(i)(1) . . ." (emphasis added). Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires the "theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." An employer files a petition with USCIS for review of the services to be performed and for determination of the noncitizen's eligibility to perform services in the specialty occupation. See 8 C.F.R. § 214.2(h)(1)(i); (1)(ii)(B)(1). The regulations at 8 C.F.R. § 214.2(h)(4) provide further specific eligibility requirements for an H-1B petition, such as those related to beneficiary qualifications and obtaining a valid, certified labor condition application (LCA) and the related attestations. An H-1B petition will be denied if the Director determines that the statements on the petition or LCA were inaccurate, fraudulent, or misrepresented a material fact. See 8 C.F.R. § 214.2(h)(10)(ii).

The Director's basis for denial of the extension petition relates solely to conduct of the Beneficiary that appears to have occurred outside of his employment with the Petitioner. For example, the Director did not conclude that the evidence indicated that the Beneficiary has not been employed by the Petitioner or that, despite being employed, has not been performing the duties of the specialty occupation for which the Petitioner filed the H-1B petition. The record also does not contain sufficient evidence that the Petitioner was involved in the scheme to assist the Beneficiary's wife in obtaining H-1B status and, if so, that this reflects on the bona fide nature of the Petitioner's job offer. The Director's conclusion that the Beneficiary has engaged in unauthorized employment does not preclude the Petitioner from employing the Beneficiary in a specialty occupation and therefore having a bona fide job offer for the Beneficiary. Therefore, we will remand the matter for further development of the record regarding the existence of the bona fide job offer for the Beneficiary, as well as any other evidence to determine whether the Petitioner has demonstrated eligibility under the relevant statutory and regulatory framework for an H-1B extension petition.

Second, we take no position regarding the Director's determination to deny the Beneficiary's extension of stay. Although those seeking H-1B status are currently permitted to file one form to request a petition extension and an extension of stay for a beneficiary, they are still separate determinations. 8 C.F.R. § 214.2(h)(14); 8 C.F.R. § 214.2(h)(15); and 8 C.F.R. § 214.1(c). Moreover, there is no appeal from a decision to deny an extension of stay to a beneficiary. 8 C.F.R. § 214.2(h)(10)(iii); see also 8 C.F.R. § 214.1(c)(5). 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, and state no position on, the Petitioner's appeal from the Director's determination that the Beneficiary is ineligible for an extension of stay under 8 C.F.R. § 214.1(c).

We agree with the Director that the Petitioner must establish that a bona fide job offer exists for the Beneficiary to perform services in the specialty occupation. But the Director does not sufficiently articulate how the Beneficiary's role as a signatory on an H-1B petition for the Beneficiary's wife relates to the Petitioner, its job offer, or the other eligibility requirements for its H-1B petition. Accordingly, the matter will be remanded to the Director to determine if the Petitioner has established eligibility for an H-1B extension under the relevant statutory and regulatory framework and to enter a new decision. The Director may request any additional evidence considered pertinent to the new determination. As such, we express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.