U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 2820382

DATE: JULY 22, 2020

Appeal of California Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

The Petitioner, an information technology and consulting firm, seeks to extend the Beneficiary's temporary employment as a "Lead QA Analyst/Consultant" 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 California Service Center denied the Form I-129, Petition for a Nonimmigrant Worker. The Petitioner subsequently filed this appeal. On February 14, 2019, we issued a notice of intent to dismiss (NOID) the appeal, as a preliminary review of the record revealed that the Petitioner may not have been in good standing to conduct business where it is located in the State of Texas. Texas law provides that the state's comptroller may forfeit the right of a taxable entity to transact business in the state for the same reasons it utilizes in relation to the forfeiture of corporate privileges.[1] We further notified the Petitioner that it must submit evidence that the petitioning entity "was able to conduct business in the State of Texas – without interruption – from the time [it] filed the petition through the present day, as any such interruption may adversely affect this appeal." In response, the Petitioner provided a Tax Clearance Letter for Reinstatement, a Business Organizations Inquiry form, a Payment Portal form, a Certificate of Fact form, and its own statement. The Petitioner's statement in response to the NOID only identified the four documents listed above without addressing its uninterrupted ability to conduct business in the State of Texas.

Turning to the evidence submitted in response to the NOID, we conclude that it also does not establish the Petitioner's uninterrupted ability to conduct business in the State of Texas from the time it filed the petition through the date of the NOID. First, the February 28, 2019, Tax Clearance Letter for Reinstatement states that the petitioning organization "has met all franchise tax requirements and is eligible for reinstatement . . . ." Not only does this letter not establish the Petitioner's continued eligibility to conduct business in the state, but it actually demonstrates a break in such a status through expressing the organization's eligibility for reinstatement. Second, the Payment Portal form document illustrates that on February 21, 2019, the Petitioner submitted a payment that appears to rectify its

[1] Tex. Tax Code Ann. § 171.2515.

franchise tax deficiency. This material also does not address whether the Petitioner maintained its status throughout the relevant timeframe, and it appears to verify a deficiency leading to the Petitioner's tax forfeiture status.

Third, the Business Organizations Inquiry form represents an "Original Date of Filing" of July 16, 2012, and that the petitioning organization was "In existence" on March 15, 2019 – the date this document was saved from a website. The information on this document does not speak to the Petitioner's continued and uninterrupted ability to conduct business in the state. Finally, the Certificate of Fact document from the Texas Office of the Secretary of State certifies that a Certificate of Formation for the petitioning organization was filed in the Secretary's office on July 16, 2012. We agree that the Certificate of Fact verifies that the petitioning organization began a company in Texas on July 16, 2012. However, this certificate does not speak to the Petitioner's status at any point between its inception and the date the state executed the certificate on March 15, 2019. As our NOID clearly notified the Petitioner that it must demonstrate its status within the state was uninterrupted, this certificate is insufficient to satisfy its burden of proof.

The Petitioner must establish that it has satisfied all eligibility requirements for the immigration benefit from the time of the petition filing and continuing through adjudication, which includes the present appeal.[2] Further, the regulation governing NOID responses states:

> In response to a request for evidence or a notice of intent to deny, and within the period afforded for a response, the applicant or petitioner may: submit a complete response containing all requested information at any time within the period afforded; submit a partial response and ask for a decision based on the record; or withdraw the benefit request. All requested materials must be submitted together at one time, along with the original [U.S. Citizenship and Immigration Services] request for evidence or notice of intent to deny. Submission of only some of the requested evidence will be considered a request for a decision on the record.[3]

Therefore, when the Petitioner submitted the evidence in response to the NOID, this was a request for a decision on the record as presently exists. As noted above, the material on record does not demonstrate that the Petitioner consistently maintained its status to conduct business in Texas. Such a lapse in status would mean that a *bona fide* job offer did not exist to support the petition.

We further note the order of the following germane events: NOID issued on February 14, 2019; tax rectification payment on February 21, 2019; and the corporation's status reinstatement on February 28, 2019. The timing of these events appears to indicate that based on the adverse information within the NOID, the organization petitioned the state to remedy the issue so that it could provide evidence of its current status to conduct business in the state, and it is unclear whether it would have done so otherwise. For the reasons outlined above, the Petitioner has not established eligibility for the benefit sought.

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[2] 8 C.F.R. § 103.2(b)(1).
[3] *See* 8 C.F.R. § 103.2(b)(11).

ORDER: The appeal is dismissed.