U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9373329

Date: JULY 2, 2020

Appeal of California Service Center Decision

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

The Petitioner, a foreign language emersion preschool, seeks to employ the Beneficiary temporarily under the H-1B nonimmigrant classification for specialty occupations.[1] 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 California Service Center Director denied the Form I-129, Petition for a Nonimmigrant Worker, concluding that the record did not establish that the proffered position qualified as a specialty occupation. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.[2] We review the questions in this matter *de novo*.[3] Upon *de novo* review, we will dismiss the appeal.

I. ANALYSIS

Upon review of the entire record, for the reasons set out below, we have determined that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. The Director concluded that the Petitioner did not establish that the offered position qualifies as a specialty occupation. In her decision, the Director thoroughly discussed the Petitioner's failure to meet any of the four regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*)–(*4*). Upon consideration of the entire record, including the evidence submitted and arguments made on appeal, we adopt and affirm the Director's decision with the comments below.[4]

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[1] *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

[2] Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

[3] *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

[4] *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994)); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

On appeal, the Petitioner states the Director either fails to acknowledge or discounts its relevant evidence, or it generally disagrees with the Director's findings. However, the Petitioner does not specify what evidence was ignored or improperly discounted. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought.[5] Commensurate with that burden is responsibility for explaining the significance of proffered evidence.[6] Filing parties should not submit evidence without notifying the appellate body of the specific element that corroborates their claims, as doing so places an undue burden to search through the documentation without the aid of the filing party's knowledge.[7] The truth is to be determined not by the quantity of evidence alone but by its quality.[8]

Relating to the aspects in which the Petitioner disagrees with the Director's findings, but fails to explain that such disagreement is based on the Director's error, this is an insufficient basis to claim on appeal. It is inadequate to merely assert that the preceding authority made an improper determination. Within an appeal, it should be clear whether the alleged impropriety in the decision lies with the interpretation of the facts or the application of legal standards. Where a question of law is presented, supporting authority should be included, and where the dispute is on the facts, there should be a discussion of the particular details contested.[9]

Merely claiming the Director made an improper determination is the reason the regulation at 8 C.F.R. § 103.3(a)(1)(v) was promulgated; to allow this body to promptly deal with appeals where the reasons given for the appeal are inadequate to inform it of the particular basis for the claim that the Director's decision before us is wrong.[10] The Petitioner must identify all of the errors made by the Director as it relates to each of the claimed criteria. Otherwise, we must speculate on what error the Petitioner alleges. Failure to identify the error in law or error in fact for each criterion contested on appeal, equates to an insufficient claim of eligibility within the appellate proceeding.

We note that even if the Petitioner had met the requirements of one of the regulatory criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*)–(*4*), we would still dismiss the appeal as the Petitioner has not demonstrated that this occupation satisfies the statutory definition of a specialty occupation. Two prominent U.S. Department of Labor resources reflect that the degree requirements to enter this occupation vary. Those sources generally reflect that candidates typically need an associate's degree at the entry-level.[11]

The statutory definition constitutes the primary requirement for a position to qualify as a specialty occupation.[12] The criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary

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[5] Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).
[6] *Repaka v. Beers*, 993 F. Supp. 2d 1214, 1219 (S.D. Cal. 2014).
[7] *Cf. Flagstar Bank, FSB v. Walker*, 451 S.W.3d 490, 505, n.51 (Tex. App. Nov. 14, 2014) (citing to *Aguilar v. Morales*, 162 S.W.3d 825, 838 (Tex. App. 2005)).
[8] *Chawathe,* 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989)).
[9] *Id.*
[10] *Cf. Matter of Valencia*, 19 I&N Dec. 354, 355 (BIA 1986).
[11] See *Preschool Teachers*, Occupational Outlook Handbook (June 17, 2020), https://www.bls.gov/OOH/education-training-and-library/preschool-teachers.htm#tab-1 and *Summary Report for: 25-2011.00 - Preschool Teachers, Except Special Education*, O*NET OnLine (June 17, 2020), https://www.onetonline.org/link/summary/25-2011.00.
[12] *See* section 214(i)(1) of the Act.

but not necessarily sufficient to meet the statutory and regulatory definition of a specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition.[13]

In promulgating the H-1B regulations, the former Immigration and Naturalization Service made it clear that the definition of the term "specialty occupation" could not be expanded "to include those occupations which did not require a bachelor's degree in the specific specialty."[14] More specifically, in responding to comments that "the definition of specialty occupation was too severe and would exclude certain occupations from classification as specialty occupations," the former INS stated that "[t]he definition of specialty occupation contained in the statute contains this requirement [for a bachelor's degree in the specific specialty, or its equivalent]" and, therefore, "may not be amended in the final rule."[15]

While the regulatory criteria may allow for a lesser standard (e.g., a qualifying degree is *normally* the minimum requirement for entry into the particular position, or such a degree is *common* to the industry), the statute does not provide for such a relaxed benchmark. The statute mandates a qualifying degree (or its equivalent) as a prerequisite simply to enter into the occupation.[16]

We further note the distinction between the first criterion that focuses on the particular job offered in the petition, compared to the statute that concentrates on the broader occupation as a whole (i.e., comprised of an abundance of jobs, all of which must require a qualifying degree or an equivalent). Consequently, the possibility exists that a petitioner could demonstrate it has met the requirements of the first criterion relying on the lesser entry standard, but fail to satisfy the statutory definition because a qualifying degree is not mandated to enter an occupation.

As explained above, the statutory and regulatory definition of a specialty occupation requires a degree in a specific specialty (or its equivalent) that is directly related to the proposed position.[17] We conclude that based on the evidence within this record of proceeding, the Petitioner has not demonstrated that the position it offers in the petition meets those definitions. As a result, it has not demonstrated eligibility under the H-1B program.

Finally, the Petitioner argues on appeal that the agency previously approved a separate petition for this position. However, we are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous.[18] Furthermore,

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[13] *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

[14] Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 56 Fed. Reg. 61111, 61112 (Dec. 2, 1991) (to be codified at 8 C.F.R. pt. 214).

[15] *Id.*

[16] *See Itserve All., Inc. v. Cissna*, No. CV 18-2350 (RMC), 2020 WL 1150186, at *19 (D.D.C. Mar. 10, 2020) (recognizing that a specialty occupation would encompass a host of jobs, beginning at the trainee level and extending to an expert along with concomitant but differing personal job duties).

[17] Section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii).

[18] *See Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987).

we are not bound to follow a contradictory decision of a service center.[19] In particular, the Petitioner has not offered evidence demonstrating that the occupation in this petition satisfies the H-1B program requirements. As a result, the Petitioner has not demonstrated that the Director's decision to deny the petition was in error.

II. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden here, and the petition will remain denied.

ORDER: The appeal is dismissed.

[19] *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *3 (E.D. La. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001).