U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10188600

Date: SEPT. 28, 2020

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker

The Petitioner, a full-service audio-video store and service provider, seeks to temporarily employ the Beneficiary as a systems engineer, 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 petition, concluding that the Petitioner did not establish that the proffered position qualifies as a specialty occupation. The Petitioner submits an appeal brief and asserts that the Director erred in the decision.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See 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. 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.[1]

The Director concluded that the Petitioner did not establish that the proffered 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. *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*

[1] The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. Although we may not discuss every document submitted, we have reviewed and considered each one.

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 submits a brief and no additional documentation. The Petitioner contends on appeal that the reliance of the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source is misguided and illegitimate based on the pronouncements made in the *Handbook* and documentation obtained from the Bureau of Labor Statistics (BLS). The pertinent disclaimer provides instructions on unintended uses of the *Handbook*, which are: (1) using the *Handbook* as a guide for determining (a) wages, (b) hours of work, (c) the right of a particular union to represent workers, (d) appropriate bargaining units, or form job evaluation systems; and (2) using the *Handbook's* data to compute future loss of earnings in adjudication proceedings involving work injuries or accidental deaths. In light of the BLS' own endorsement of the *Handbook* as a reliable source of information on occupational categories and their entry requirements, and in light of the examples of unintended uses cited in the *Handbook's* "Important Note," the AAO finds that, if in fact it is counsel's intent to so argue, the argument against the use of the *Handbook* in United States Citizenship and Immigration Services' (USCIS) adjudications is without merit. However, the AAO concurs with counsel to the extent that counsel may be asserting that it would be erroneous to accord to the *Handbook* the weight or directive power of statute, regulation, or any legally binding document or directive.

We do not maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and we regularly review the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

We also note that on appeal the Petitioner states that it "provided numerous schematics" that were prepared by the Beneficiary as evidence of his work. However, upon review of the schematics, they do not list the Beneficiary or the Petitioner anywhere. But instead the schematics appear to have the company, "Collins" listed on them. The Petitioner has not explained this discrepancy. Furthermore, the Petitioner contends that it provided enough information regarding the systems the Beneficiary will design and test, but it submits the same job description and it does not name and describe the specific software systems utilized by the Petitioner. It is the Petitioner's burden to submit evidence that sufficiently corroborates its claims. Statements made without supporting documentation are of limited probative value and are insufficient to satisfy the Petitioner's burden of proof. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998).

II. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden here, and the petition will remain denied.

ORDER: The appeal is dismissed.