



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

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

MATTER OF O-, INC.

DATE: APR. 3, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a healthcare information technology non-profit organization, seeks to temporarily employ the Beneficiary as a "research analyst" 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 demonstrate that: (1) the Beneficiary is entitled to an exemption from the general limit on the number of H-1B visas issued per year (the cap); and (2) it qualifies as an organization that is exempt from paying the \$1,500 American Competitive and Workforce Improvement (ACWIA) fee.

In its appeal, the Petitioner submits additional evidence and asserts that the evidence of record was sufficient to establish eligibility for the exemption sought. Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for foreign nationals who are coming temporarily to the United States to perform services in a specialty occupation. In general, H-1B visas are numerically capped by statute. Pursuant to section 214(g)(1)(A) of the Act, the total number of H-1B visas issued per fiscal year may not exceed 65,000.

In general, section 214(g)(5) of the Act provides that:

The numerical limitations contained in paragraph (1)(A) shall not apply to any nonimmigrant alien issued a visa or otherwise provided status under section 101(a)(15)(H)(i)(b) who—

- (A) is employed (or has received an offer of employment) at an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 [§] U.S.C. 1001(a))), or a related or affiliated nonprofit entity;
- (B) is employed (or has received an offer of employment) at a nonprofit research organization or a governmental research organization; or
- (C) has earned a master's or higher degree from a United States institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 [§] U.S.C. 1001(a))), until the number of aliens who are exempted from such numerical limitation during such year exceeds 20,000.

Further, the following definition of "nonprofit research organization or governmental research organization" is provided in the regulation at 8 C.F.R. § 214.2(h)(19)(iii)(C):

A nonprofit research organization is an organization primarily engaged in basic research and/or applied research. A governmental research organization is a United States Government entity whose primary mission is the performance or promotion of basic research and/or applied research. Basic research is general research to gain more comprehensive knowledge or understanding of the subject under study, without specific applications in mind. Basic research is also research that advances scientific knowledge, but does not have specific immediate commercial objectives although it may be in fields of present or potential commercial interest. It may include research and investigation in the sciences, social sciences, or humanities. Applied research is research to gain knowledge or understanding to determine the means by which a specific, recognized need may be met. Applied research includes investigations oriented to discovering new scientific knowledge that has specific commercial objectives with respect to products, processes, or services. It may include research and investigation in the sciences, social sciences, or humanities.

II. ANALYSIS

The Petitioner filed the H-1B petition in June 2016 for an employment period to commence in July 2016 and indicated that the instant petition is exempt from the cap.

The 2016 fiscal year (FY16) extends from October 1, 2015, through September 30, 2016. Further, on April 7, 2015, U.S. Citizenship and Immigration Services issued a notice that it had received a sufficient number of H-1B petitions to reach the H-1B cap for FY16. The instant petition is therefore subject to the 2016 H-1B cap, unless exempt.

The Petitioner claimed that it is exempt from the H-1B cap as a "nonprofit research organization" under 8 C.F.R. § 214.2(h)(19)(iii)(C). On appeal, the Petitioner asserts that the Director erred in concluding that it is not a nonprofit research organization. We carefully examined each piece of

evidence in the record and determined that the Petitioner has not submitted sufficient documentation to demonstrate that it meets the definition as a nonprofit research organization, primarily engaged in basic and/or applied research.¹

In the letter of support, the Petitioner stated that it “sells, installs, and optimizes its centrally hosted instances of [REDACTED] and electronic health record (EDR), and provides comprehensive training for clinicians and staff to utilize these tools effectively.” The Petitioner also explained that it is involved in research work with the “mission to improve the health of underserved populations, enhance quality of care, and inform health policy through research.”

On the labor condition application, the Petitioner designated its operations under the North American Industry Classification System (NAICS) code 541511 for Custom Computer Programming Services. The U.S. Census provides the following information for this NAICS code:²

541511 Custom Computer Programming Services

This U.S. industry comprises establishments primarily engaged in writing, modifying, testing, and supporting software to meet the needs of a particular customer.

In response to the Director’s request for evidence, the Petitioner submitted its 2014 Form 990, Return of Organization Exempt From Income Tax. Under the section where the Petitioner is asked to briefly describe the organization’s mission it stated “providing health information technology, software and services exclusively for community health clinics and small practices serving the medically underserved.” The Petitioner does not mention research as a component of its operations.

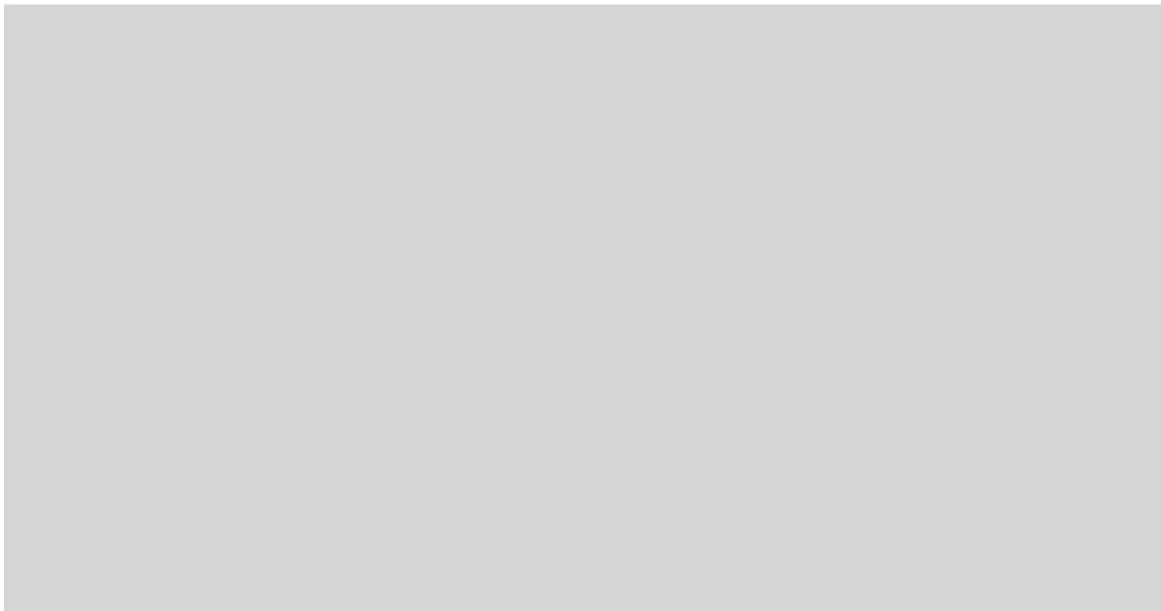
On appeal, the Petitioner states that “while our company engages in business of hosted and implementing electronic health records, this function allows us the ability to conduct research on vulnerable patient populations and provide a unique set up for research study.” According to the Petitioner, its research is unique as one of the few organizations in the country “capturing health care data on low income and uninsured populations.”

In the “About Us” section of the Petitioner’s website, it describes itself as follows:

[The company] is [REDACTED]

¹ The Petitioner submitted documentation in support of the H-1B petition, including evidence regarding the proffered position and the Petitioner’s operations. While we may not discuss every document submitted, we have reviewed and considered each one.

² For additional information, see <https://www.census.gov/cgi-bin/sssd/naics/naicsrch>.



In the appeal, the Petitioner listed the names and job titles of its “current research staff.” The list consists of 27 individuals, who according to the Petitioner are “either employees [of the Petitioner] or contract directly with [it].” We note, however, that on the Form I-129, the Petitioner stated that it has currently has 300 employees in the United States.

A nonprofit research organization is an organization that is *primarily* engaged in basic research and/or applied research. 8 C.F.R. § 214.2(h)(19)(iii)(C). Here, however, there is a lack of sufficient evidence demonstrating, for example, how the Petitioner’s employees and other resources are dedicated to research activities. The Petitioner provided documentation about various research projects (including company printouts and research papers) and it appears to engage in some basic and/or applied research as part of its mission, however, the Petitioner did not submit sufficient evidence to demonstrate that it is primarily engaged in such research.

III. CONCLUSION

We find that the Petitioner did not demonstrate that it qualifies as a nonprofit research organization. Therefore, the Petitioner has not established that the instant petition is exempt from the H-1B cap and that it is exempt from paying the \$1,500 ACWIA fee.

ORDER: The appeal is dismissed.

Cite as *Matter of O-, Inc.*, ID# 13837 (AAO Apr. 3, 2017)