



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

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

MATTER OF D-C-O-I-S- DDS

DATE: DEC. 26, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

A dental office seeks to temporarily employ the Beneficiary as a dentist 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 revoked the approval of the petition, concluding that: (1) the Petitioner filed a duplicate petition in prohibition of 8 C.F.R. § 214.2(h)(2)(i)(G); (2) the Petitioner did not make a credible offer of employment; and (3) the Petitioner did not pay the appropriate fee under the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA).

On appeal, counsel submits a brief and additional evidence, and asserts that the Director erred in her decision.

Upon *de novo* review, we will dismiss the appeal.

I. BACKGROUND

The Form I-129, Petition for a Nonimmigrant Worker, listed the name of the Petitioner as D Corp.¹ The Form I-129 requested new full-time employment for the Beneficiary, listed only one work address for her, and indicated that an itinerary would not be submitted with the petition.

After initially approving the petition, the Director issued a notice of intent to revoke (NOIR) questioning whether D Corp. and a related entity, S Corp., filed duplicate petitions for the Beneficiary, and whether a credible offer of employment existed since both entities offered full-time

¹ We will use abbreviated company names for simplicity and privacy purposes.

employment. The Director further inquired about the appropriate ACWIA fee, noting that another company, [REDACTED], appeared to have filed the petition.

[REDACTED] responded to the NOIR explaining that D Corp. is the Petitioner and did not intend to submit duplicate petitions for the Beneficiary. Citing to the regulation at 8 C.F.R. § 214.2(h)(2)(i)(C) requiring separate petitions when a beneficiary will perform services for more than one employer, [REDACTED] reasoned that two petitions were submitted for the Beneficiary because she will be concurrently working for D Corp. and S Corp.

On appeal, counsel elaborates that, at the time of filing, both D Corp. and S Corp. intended to employ the Beneficiary on a full-time basis, defined as at least 30 hours per week. Counsel also requests U.S. Citizenship and Immigration Services (USCIS) to treat this as a “concurrent” filing explaining that, at the time of filing, it could not have submitted this as a petition for concurrent employment since concurrent petitions require at least one approval.

II. MULTIPLE PETITIONS

A. Legal Framework

The regulation at 8 C.F.R. § 214.2(h)(2)(i)(G) prohibits multiple H-1B petitions from being filed in the same fiscal year for the same beneficiary by an employer, or, under certain circumstances, by “related entities.” 8 C.F.R. § 214.2(h)(2)(i)(G) states, in pertinent part:

An employer may not file, in the same fiscal year, more than one H-1B petition on behalf of the same alien if the alien is subject to the numerical limitations of section 214(g)(1)(A) of the Act or is exempt from those limitations under section 214(g)(5)(C) of the Act. . . . Otherwise, filing more than one H-1B petition by an employer on behalf of the same alien in the same fiscal year will result in the denial or revocation of all such petitions. If USCIS believes that related entities (such as a parent company, subsidiary, or affiliate) may not have a legitimate business need to file more than one H-1B petition on behalf of the same alien subject to the numerical limitations of section 214(g)(1)(A) of the Act or otherwise eligible for an exemption under section 214(g)(5)(C) of the Act, USCIS may issue a request for additional evidence or notice of intent to deny, or notice of intent to revoke each petition. If any of the related entities fail to demonstrate a legitimate business need to file an H-1B petition on behalf of the same alien, all petitions filed on that alien’s behalf by the related entities will be denied or revoked.

² Documents in the record identify [REDACTED] as a dental support organization which provides administrative and business support services (e.g., human resources, recruiting, payroll, and legal support services) to third party dental offices, including D Corp. and S Corp.

As seen above, 8 C.F.R. § 214.2(h)(2)(i)(G) requires the revocation of all approved petitions for the same beneficiary filed by related entities unable to demonstrate a legitimate business. This specific revocation provision supplements the general revocation provision found at 8 C.F.R. § 214.2(h)(11)(iii)(A), which provides for revocation on notice if:

- (1) The Beneficiary is no longer employed by the Petitioner in the capacity specified in the petition . . . ; or
- (2) The statement of facts contained in the petition . . . was not true and correct, inaccurate, fraudulent, or misrepresented a material fact; or
- (3) The Petitioner violated terms and conditions of the approved petition; or
- (4) The Petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or
- (5) The approval of the petition violated [paragraph] (h) of this section or involved gross error.

B. Analysis

Upon review, we conclude that the Director properly revoked the petition.

In our view, D Corp. and S Corp. are “related entities.” Their relationship is evident by such factors as their common ownership, utilization of the same management company’s services, and history of concurrently employing the Beneficiary.³ While counsel correctly points out that D Corp. and S Corp. are separate and independent employers with different federal tax identification numbers, their separate legal existence does not preclude a finding that they are “related” for these purposes.

To say that an entity is “related” to another, under the ordinary meaning of the word, is to say that a reasonable connection exists between the two.⁴ The regulation at 8 C.F.R. § 214.2(h)(2)(i)(G) does not limit the meaning of “related entities” to a parent company, subsidiary, or affiliate; instead, by using “such as” before those terms, it indicates that “related entities” can include, but are not limited to, those enumerated relationships. We expansively interpret the types of “related entities” encompassed by 8 C.F.R. § 214.2(h)(2)(i)(G) in order to effectuate this provision’s remedial purposes. 8 C.F.R. § 214.2(h)(8)(ii)(B) (addressing “the fair and orderly allocation of numbers” under the H-1B visa lottery); *Petitions Filed on Behalf of H-1B Temporary Workers Subject to or Exempt from the Annual Numerical Limitation*, 73 Fed. Reg. 15389-95, 15391-93 (Mar. 24, 2008)

³ These are not exclusive factors.

⁴ For example, *Merriam-Webster Online Dictionary* defines the word “related” as “connected by reason of an established or discoverable relation.” *Merriam-Webster Online Dictionary*, <https://www.merriam-webster.com/dictionary/related> (last visited Dec. 22, 2017).

(discussing the practice of petitioners who exploit the system by attempting to increase their chances of being selected for cap numbers). *See, e.g., Gomez v. Toledo*, 446 U.S. 635, 639 (1980) (a remedial statute should be construed generously to further its primary purpose) (citing *Whirlpool Corp. v. Marshall*, 445 U.S. 1, 12-13 (1980)).

Counsel asserts that, to the extent D Corp. and S Corp. are related, they had a legitimate business need to file separate petitions for the Beneficiary based on their concurrent employment for her. However, the record does not sufficiently document the terms and conditions of the Beneficiary's employment, which undermines any claim regarding either entity's legitimate need.

Specifically, both petitions indicated that the Beneficiary will be employed on a full-time basis, but the record contains discrepancies regarding the Beneficiary's total number of hours per week per location. For example, on appeal counsel explains that D Corp.'s definition of "full-time" is at least 30 hours per week per office according to the Affordable Care Act. However, D Corp.'s employment agreement with the Beneficiary, dated August 2015, is for "part-time" employment defined therein as less than 32 hours a week in the aggregate. While counsel explains that the employment agreement was signed prior to D Corp.'s adoption of the Affordable Care Act definition in 2015, she does not clarify exactly when D Corp. adopted the new definition, nor does she corroborate this claim with objective evidence such as an amended employment agreement containing a revised definition. Notably, the record contains a copy of the Beneficiary's original and *revised* employment agreements with S Corp., dated August 2015 and December 2015, respectively, the latter of which changed the Beneficiary's proposed employment status from part-time to full-time but still defined part-time employment as less than 32 hours per week. The employment agreements are silent as to the Beneficiary's specific pay rate.

Further, the Form I-129 listed the proffered wage as \$2,000 per week, and the labor condition application (LCA)⁵ indicated that the Beneficiary will be paid \$50 per hour, which would suggest that based on the \$2,000 weekly wage, she would work 40 hours per week. On the other hand, the Beneficiary's pay statements show an hourly pay rate of \$56.25 per hour. The pay statements contain varying amounts of pay and unexplained pay categories, and we are unable to how many hours the Beneficiary worked during each pay period. For example, for the pay period from May 16, 2016, to May 31, 2016, the pay categories include "Salary" of \$1,560 and "Regular-Dr." category of \$240, which add up to \$1,800. At \$56.25 pay rate, this suggests that the Beneficiary worked 32 hours for the two week period or 16 hours per week. However, another pay statement from June 1, 2016, to June 15, 2016, reflects that the Beneficiary received \$1,560, which would suggest she worked 28 hours for the two-week period or 14 hours per week.

⁵ The Petitioner is required to submit a certified LCA to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the "area of employment" or the actual wage paid by the employer to other employees with similar experience and qualifications who are performing the same services. *See Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 545-546 (AAO 2015).

Moreover, the employment agreement allows the Beneficiary to provide dental services “at any and all other dental practices receiving business support services from [REDACTED] or affiliated companies].” By the very terms of her employment agreement, the Beneficiary may provide dental services to other, unspecified dental offices under unspecified conditions. This contractual provision opens up additional questions about the Beneficiary’s proposed employment.

As discussed above, the inconsistencies and ambiguities surrounding the terms and conditions of Beneficiary’s employment preclude us from assessing the legitimacy of the claimed business need. Without more, we conclude that the Petitioner has not demonstrated its legitimate business need and overcome the Director’s grounds for revoking the approved petition pursuant to 8 C.F.R. § 214.2(h)(2)(i)(G).⁶

III. CREDIBLE OFFER OF EMPLOYMENT

We also agree with the Director that the record was insufficient to demonstrate the credibility of the job offer to the Beneficiary. As discussed above, the record does not sufficiently demonstrate the terms and conditions of the proposed employment, including how many hours she will work per week per location and her pay rate. Therefore, the Director also properly revoked the approval of the petition under 8 C.F.R. § 214.2(h)(11)(iii)(A)(1), (2), and (5).

Ambiguities surrounding the actual employer, i.e., the Petitioner, further cloud our understanding of the job offer’s credibility. While D Corp. is named as the employer and Petitioner, a representative of [REDACTED] signed all attestations on the Form I-129 and accompanying forms in the spaces reserved exclusively for the “Petitioner” or an “Authorized Official of Employer.” The support letter submitted with the petition is from [REDACTED] and speaks of D Corp. as “part of” [REDACTED] while also speaking of the Beneficiary as becoming part of “our professional staff” (emphasis added). [REDACTED] submitted the NOIR response. The appeal was submitted by [REDACTED] of [REDACTED] whose Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, was signed by a representative of [REDACTED]. See 8 C.F.R. § 292.4(a) (the Form G-28 must be properly completed and signed by the Petitioner).

On appeal, counsel contends that [REDACTED] properly signed all forms as D Corp.’s “agent for service.” However, the record does not support the conclusion that [REDACTED] qualified as D Corp.’s “agent” under California law, and more pertinently, for H-1B purposes under 8 C.F.R. § 214.2(h)(2)(i)(F). The record does not contain any agent authorization or similar contractual agreement between [REDACTED] and D Corp. While the record confirms the existence of a relationship between [REDACTED] and D Corp., it does not sufficiently detail the scope of that relationship, including [REDACTED] authority, if any, to sign or file

⁶ We acknowledge counsel’s explanation for why she believed the filing of two petitions was necessary. If the record had credibly demonstrated the Beneficiary’s definite, concurrent employment with both entities as claimed, then we likely would have agreed with counsel’s position under those circumstances. However, we cannot reach that conclusion here. As discussed above, the inconsistencies and ambiguities surrounding the terms and conditions of Beneficiary’s employment undermines the legitimacy of the claimed business need.

immigration paperwork on D Corp.'s behalf. The record as presently constituted does not sufficiently demonstrate who the actual employer and Petitioner is, and consequently, whether D Corp.'s offer of employment to the Beneficiary is credible.

Even if D Corp. is the Petitioner of the Form I-129, we must question whether it maintained this standing at the time of appeal. The appeal contains evidence establishing that D Corp. amended its corporate structure and changed its legal name to R Corp. This corporate restructure appeared to have occurred on or before January 1, 2017.⁷ The appeal was subsequently filed on January 18, 2017, but continues to name the Petitioner as D Corp. rather than its legal name at that time, R Corp. Moreover, counsel states on appeal that the restructure "does not grant any benefits or allowances for immigration purposes." This statement raises additional questions about the terms of agreement under which the corporate restructure took place, e.g., whether R Corp. succeeded to the interests and obligations of D Corp. and whether the terms and conditions of employment remain the same but for the Petitioner's identity. See section 214(c)(10) of the Act; 8 C.F.R. § 214.2(h)(2)(i)(D), (E); 20 C.F.R. § 655.730(e)(2).

Ultimately, the record does not sufficiently demonstrate the terms and conditions of employment, and hence, the credibility of the job offer. The Petitioner has not overcome the Director's determination that the Beneficiary is no longer employed by the Petitioner in the capacity specified in the petition, the statement of facts contained in the petition was not true and correct, and that the approval of the petition violated 8 C.F.R. § 214.2(h). 8 C.F.R. § 214.2(h)(11)(iii)(A)(1), (2), (5).

IV. ACWIA FEE

The same ambiguities regarding the actual employer and Petitioner also preclude us from determining whether the appropriate ACWIA fee was paid for this petition. Because the record does not sufficiently establish who the Petitioner is, i.e., [REDACTED] or D. Corp., we cannot determine the Petitioner's size and whether the \$1,500 fee or the \$750 reduced fee (for petitioners who employ no more than 25 full-time equivalent employees) was appropriate.

V. CONCLUSION

The Director properly revoked the petition's approval.

ORDER: The appeal is dismissed.

Cite as *Matter of D-C-O-L-S- DDS*, ID# 417237 (AAO Dec. 26, 2017)

⁷ The most recent stock certificates were issued on January 1, 2017.