



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

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

MATTER OF A-T-S-, INC.

DATE: JULY 18, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a software consulting company, seeks to temporarily employ the Beneficiary as a "software developer" 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 Vermont Service Center denied the petition, concluding that the Petitioner filed two H-1B petitions for the same Beneficiary, Y-R-¹, in violation of 8 C.F.R. § 214.2(h)(2)(i)(G).

On appeal, the Petitioner asserts that it did not file two petitions on behalf of Y-R-. The Petitioner claims that it filed one H-1B petition on behalf of Y-R-, and one H-1B petition on behalf of S-D-, another beneficiary, and that the Director confused the two petitions.

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

I. LEGAL FRAMEWORK

Pursuant to the regulation at 8 C.F.R. § 214.2(h)(2)(i)(G), an employer is prohibited from filing more than one H-1B petition on behalf of the same Beneficiary. This regulation 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. If an H-1B petition is denied, on a basis other than fraud or misrepresentation, the employer may file a subsequent H-1B petition on behalf of the same alien in the same fiscal year, provided that the numerical limitation has not been reached or if the filing qualifies as exempt from the numerical limitation. Otherwise,

¹ Initials are used throughout this decision instead of full names.

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.

II. PROCEDURAL BACKGROUND

The Petitioner filed this petition (receipt number [REDACTED]) seeking to employ the Beneficiary as a software developer. On the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner specifically identified the Beneficiary as Y-R-, and provided her biographical information. This petition was accompanied by the H Classification Supplement to Form I-129, the H-1B and H-1B1 Data Collection Filing Fee Exemption Supplement, and supporting documentation, all of which specifically identified the Beneficiary as Y-R-.

On the same day, the Petitioner filed another petition (receipt number [REDACTED]) seeking to employ the Beneficiary as a software developer. Specifically, on that Form I-129, the Petitioner again identified the Beneficiary as Y-R- and provided her biographical information. That Form I-129 was also accompanied by the appropriate H-1B supplement forms, all of which identified the Beneficiary as Y-R- and contained her biographical information. The remaining supporting documentation, however, pertained to another individual, S-D-.

The Director issued the Petitioner a notice of intent to deny this petition ([REDACTED]). The Director noted that this petition was not randomly selected under the H-1B lottery, which would normally result in the petition's rejection and return (with fee) to the Petitioner. However, the Director informed the Petitioner that this petition would not be rejected and returned, as it is a duplicative H-1B filing for the same Beneficiary, Y-R-. Concurrently, the Director issued a notice of intent to revoke the other petition ([REDACTED]) based on the Petitioner's multiple filings for Y-R-.

In response to both notices, the Petitioner stated that it "filed only one petition for the beneficiary [Y-R-] vide [REDACTED]. The Petitioner then stated that it "presume[d] that Receipt no. [REDACTED] must be for [S-D-] whose check for [U.S. Citizenship and Immigration Services] fee has been cleared but we have neither receipted the receipt notice, nor the H1B petition filed by us has been returned to us." The Petitioner acknowledged that, "[d]ue to a purely clerical error of mix up we had accidentally attached some of the documents (resume & transcripts) of [S-D-] along with the petition filed for [Y-R-]."

The Director denied this petition ([REDACTED]) and revoked the approval of the other petition ([REDACTED]) based on the multiple filings for Y-R-.

On appeal, the Petitioner states that it is "not sure as to whose case number pertains to whom. In any case both the cases are interrelated as each of the case has been denied due to HUGE MIX UP by USCIS." The Petitioner requests us to reverse the Director's decision with respect to Y-R-'s petition, and to "please track this petition filed for [S-D-]."

III. ANALYSIS

We find that the Director properly denied this petition, finding that this is a multiple H-1B filing for the same Beneficiary by the same employer. 8 C.F.R. § 214.2(h)(2)(i)(G).

After reviewing USCIS records, we find that the Petitioner did, in fact, file two H-1B petitions [REDACTED] and [REDACTED] for Y-R-. Under each receipt number, the Petitioner specifically identified Y-R- as the Beneficiary on the Form I-129 (and accompanying supplement forms) which was submitted to USCIS for processing, thus filing two H-1B petitions on her behalf.

On appeal the Petitioner submits a copy of a Form I-129 completed for S-D-, as well as supporting documentation (e.g., resume and transcripts) relating to him. However, simply submitting these documents on appeal does not constitute the actual filing of an H-1B petition for S-D-.² The actual filing of an H-1B petition for S-D- could only have been accomplished through properly submitting a Form I-129 (and required evidence) identifying him as the beneficiary, in accordance with all filing requirements. See 8 C.F.R. § 214.2(h)(2) (filing requirements for H-1B petitions); 8 C.F.R. § 103.2(a)(1) (general filing requirements for all immigration applications and petitions). There is no evidence that the Petitioner did so here; instead, the record shows that the Petitioner separately submitted two Forms I-129 for Y-R-. USCIS records do not indicate that the Petitioner filed any H-1B petitions for S-D-.

On appeal the Petitioner questions why the check for S-D- was processed, yet USCIS maintains that no H-1B petition has been filed on his behalf. But as we stated above, the Petitioner has not actually filed a petition for S-D-. This is true even if one of the Petitioner's checks was annotated with his name on it. And as the Director explained in its decision, since [REDACTED] was *denied* and [REDACTED] was *revoked* and for being duplicate filings, USCIS will not refund any filing fees notwithstanding this petition's non-selection under the H-1B lottery. See 8 C.F.R. § 214.2(h)(2)(i)(G) (mandating the *denial* or *revocation* of multiple petition cases); cf. 8 C.F.R. § 214.2(h)(8)(ii)(B) (mandating the *rejection*, not *denial* or *revocation*, of petitions not randomly selected under the H-1B lottery).

Finally, we note that both petitions [REDACTED] and [REDACTED] and appeals were prepared by an immigration "consultant" apparently operating an accounting firm. That immigration consultant specifically acknowledged that it is neither a licensed attorney in the United States nor an accredited representative authorized to undertake representations on the Petitioner's behalf. Thus,

² Nor does such a submission constitute the filing of an amended or new petition, which is required to reflect any material changes, such as the identity of the Beneficiary, from the original petition. 8 C.F.R. § 214.2(h)(2)(i)(E).

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we do not recognize this consultant as the Petitioner's representative, and will not send a copy of this decision or any other correspondence to him or her. *See* 8 C.F.R. § 292.1.

IV. CONCLUSION

Because the Petitioner filed two H-1B petitions for the same Beneficiary, Y-R-, approval of this petition is prohibited pursuant to 8 C.F.R. § 214.2(h)(2)(i)(G).

ORDER: The appeal is dismissed.

Cite as *Matter of A-T-S-, Inc.*, ID# 379619 (AAO July 18, 2017)