



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

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

MATTER OF [REDACTED]

DATE: MAY. 1, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a public school system, seeks to temporarily employ the Beneficiary as a "French teacher (middles [sic] school)" 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 individual 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. We dismissed the appeal finding that the Beneficiary did not qualify for an exemption from the Fiscal Year 2016 (FY16) H-1B cap based on the Petitioner's relation to or affiliation with an institution of higher education.

The matter is before us on a motion to reopen. In its motion, the Petitioner submits a brief and additional evidence, and asserts that our decision was erroneous. We will deny the motion.

**I. MOTION REQUIREMENTS**

To merit reopening or reconsideration, a petitioner must meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1).

A motion to reopen is based on factual grounds and must (1) state the new facts to be provided in the reopened proceeding; and (2) be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

## II. ANALYSIS

For the reasons discussed below, we will deny the motion to reopen as the Petitioner has not overcome the grounds for dismissal of the appeal. At issue is whether the Petitioner has established that it is related to or affiliated with an institution of higher education. The Petitioner claimed that it has a collaboration and affiliation with the [REDACTED] but previously did not submit any contracts, memorandums of understanding, or additional documentation outlining the nature of its relationship with the [REDACTED]. Based on these deficiencies, we denied the Petitioner's appeal.

On motion, the Petitioner submits a brief asserting that it is a related or affiliated nonprofit entity pursuant to 8 C.F.R. § 214.2(h)(19)(iii)(B) because it is attached to an institution of higher education as a member, branch, cooperative, or subsidiary. In support of this assertion, the Petitioner submits the following evidence:

1. Affidavit by [REDACTED] Assistant Director of Human Resources for the Petitioner;
2. Copy of the Clinical Experience Handbook prepared by the Office of Teacher Clinical Experiences, College of Education of [REDACTED] and additional documentation pertaining to this program;
3. Affidavit by [REDACTED] Director of Career and Technical Education/School of Choice for the Petitioner;
4. Copy of Memoranda of Understanding between the Petitioner and [REDACTED] for the 2014-2015, 2015-2016, and 2016-2017 academic school years;
5. Affidavit by [REDACTED] Project Director for the Petitioner's [REDACTED] program;
6. Copy of a document entitled "Amendment Number 2 to an Agreement [REDACTED]" between the Petitioner and the [REDACTED] and supporting evidence pertaining to the [REDACTED] program; and
7. Copy of an unpublished decision issued by our office.

Upon review, we find that the Petitioner has not demonstrated that it is a related or affiliated nonprofit entity pursuant to 8 C.F.R. § 214.2(h)(19)(iii)(B).

Preliminarily, we note that the Petitioner does not assert that it is a related or affiliated nonprofit entity pursuant to the first prong of 8 C.F.R. § 214.2(h)(19)(iii)(B) through shared ownership or control by the same board or federation, or the second prong of 8 C.F.R. § 214.2(h)(19)(iii)(B) through operation by an institution of higher education. We will therefore limit our review of the assertions on motion to whether the Petitioner has established that it is a related or affiliated nonprofit entity pursuant to the third prong of 8 C.F.R. § 214.2(h)(19)(iii)(B) through attachment to an institution of higher education as a member, branch, cooperative, or subsidiary. On motion, the Petitioner asserts that it is affiliated with [REDACTED] "through longstanding and ongoing collaborations on at least three major programs that directly and predominantly further the essential

purposes of [REDACTED] The Petitioner submits evidence pertaining to three of these claimed programs: (1) [REDACTED] (2) High School Dual Enrollment Program; and (3) [REDACTED] Program. We will discuss each program and the evidence submitted in support of each program individually below.

With regard to the [REDACTED] the Petitioner submitted an affidavit by [REDACTED] the Petitioner's Assistant Director of Human Resources. [REDACTED] states that she oversees the administration of the [REDACTED] Experience, which she claims "is a cooperative effort between [REDACTED] and [the Petitioner] designed to provide learning opportunities, experiences, and environments for undergraduate students seeking teaching degrees from the College of Education at [REDACTED] The Petitioner also submits a copy of the [REDACTED] as well as a newspaper article discussing this program and a letter from the Petitioner's Superintendent.

The Handbook submitted is an internally-generated document by [REDACTED] intended to serve "as a guide to a successful clinical experience for teacher interns, cooperating teachers, administrators and university supervisors at [REDACTED] This document does not specifically outline a defined relationship between the Petitioner and [REDACTED] instead, it simply provides an overview of the program and is intended to serve as a resource for participants. This 179-page document discusses the various components of the University's clinical experience program, but makes no mention of the Petitioner nor does it identify or outline the specifics of a formal program or partnership between the entities. Moreover, while the accompanying newspaper article identifies the Petitioner's school district as participating in its program, it does not establish shared ownership or control.

Finally, the letter submitted by the Superintendent of the Petitioner's school district merely states that "we are willing to do our part" in providing experiences for teacher candidates, and indicates that it will provide placement sites and mentor teachers in furtherance of [REDACTED] efforts to improve teacher preparation. Neither this letter, nor the Handbook and newspaper article discussed above, establish an affiliation with or relationship to [REDACTED] as described above.

The next program identified by the Petitioner is the High School Dual Enrollment Program. The Petitioner submits a letter from [REDACTED] the Petitioner's Director of Career and Technical Education/School of Choice, which outlines the basic principles of the program. [REDACTED] claims that this program is "a cooperative effort between [REDACTED] and [the Petitioner] designed to provide high school students an early start on a college education by earning college credits during high school." In support of this claimed cooperative effort, the Petitioner submits copies of Memoranda of Understanding between the Petitioner and [REDACTED] for the 2014-2015, 2015-2016, and 2016-2017 academic school years. The most recent memorandum of understanding for the 2016-2017 year indicates that the purpose is to allow qualified high school candidates to enroll in courses offered by [REDACTED] and simultaneously receive both high school and university level credits for completion of these courses.

Despite the submission of memoranda of understanding regarding this program, it appears that the Petitioner's school district is one of a number of school districts that can offer qualified students the chance to earn college-level credits while simultaneously satisfying their high school curriculum requirements. According to the documentation submitted, the Petitioner's school district has simply elected to participate in this program offered by [REDACTED]. The nature of the relationship between the parties, therefore, does not appear to be one that attaches the Petitioner to [REDACTED] as contemplated by the regulations.<sup>1</sup>

Finally, the Petitioner provides documentation pertaining to the [REDACTED] Program, a program described in an affidavit by [REDACTED] Project Director, as "a federally funded grant initiative that provides students with the skills, access, preparation and information needed to enter and succeed in post-secondary education." The Petitioner also provides a document entitled "Amendment Number 2 to Agreement [REDACTED] between [REDACTED] and the Petitioner. Notably, however, the original Agreement [REDACTED] which this document serves to amend, is not included in the record.

This amendment, which outlines authorized funding and award periods, also obligates [REDACTED] to complete all services included in Attachment A, Appendix A and Appendix A-1. Although the record contains a copy of Appendix A-1, which identifies [REDACTED] as the manager of the [REDACTED] partnership. In addition to the omission of the Original agreement which this amendment seeks to modify, the record is also devoid of copies of Attachment A and Appendix A. "Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the [petition]." 8 C.F.R. § 103.2(b)(14).

Upon review, we find that the evidence submitted on motion is not sufficient to establish that the Beneficiary is exempt from the H-1B cap for FY16. It is evident from the foregoing discussion of the evidence that the Petitioner, a public school system, is not attached to an institution of higher education in a manner consistent with the regulatory requirements. There is no probative evidence submitted that the Petitioner is a member, branch, cooperative, or subsidiary of [REDACTED]. All four of these terms indicate at a bare minimum some type of shared ownership and/or control, which has not been presented in this matter. *See generally Black's Law Dictionary* at 212, 384, 1565 (9th Ed. 2009) (defining the terms branch, cooperative, and subsidiary); *see also Webster's New College Dictionary* at 699 (3rd Ed. 2008) (defining the term member).

Again, while the Petitioner implies that it has an affiliation with [REDACTED] the record contains no independent documentation of the existence of any collaborative programs. Although the record contains documentation suggesting that the Petitioner participates in various programs run by [REDACTED] the record contains no particular documentation establishing the existence of collaborative programs between the Petitioner and the University. The record does not contain copies of actual

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<sup>1</sup> The proffered position in this matter is that of a French teacher at the middle school level. It is unclear, therefore, how the existence of this program geared toward high school and college-level academics would pertain to the Beneficiary's claimed cap exemption and role within the petitioning entity.

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agreements between the Petitioner and [REDACTED] establishing an affiliation between the parties, that outline in detail the mission, responsibilities, or obligations of the parties. Rather, the record contains evidence identifying programs operated by [REDACTED] in which the Petitioner appears to participate; however, as discussed above, the roles of the parties and their relationship to each other is not clearly defined by the minimal documentation submitted. The Petitioner has not submitted sufficient documents critical to defining the scope of any such agreements.

Therefore, the record as constituted does not demonstrate that the Petitioner is related to or affiliated with an institution of higher education and exempt from the H-1B cap pursuant to section 214(g)(5) of the Act.<sup>2</sup>

### III. CONCLUSION

The Petitioner has not shown proper cause for reopening as the evidence submitted on motion does not establish eligibility for the requested benefit.

**ORDER:** The motion to reopen is denied.

Cite as *Matter of* [REDACTED] ID# 263883 (AAO May. 1, 2017)

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<sup>2</sup> On motion, the Petitioner refers to an unpublished decision in which we determined that the employer in that matter was exempt from the H-1B cap. This decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. See 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.