



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

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

MATTER OF L-P-S- [REDACTED]

DATE: OCT. 20, 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 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 Beneficiary did not qualify for an exemption from the Fiscal Year 2016 (FY16) H-1B numerical limits or “cap” based on the Petitioner’s relation to or affiliation with the [REDACTED]. We dismissed the Petitioner’s appeal and then denied a subsequent motion to reopen. The matter is now before us on a second motion to reopen.

On motion, the Petitioner submits additional evidence and contends that the petition should be approved. We have also considered the materials submitted by the Petitioner in response to our request for evidence (RFE).

Upon *de novo* review, we will grant the motion to reopen and sustain the appeal.

I. LEGAL FRAMEWORK

The total number of H-1B visas issued per fiscal year may not exceed 65,000. Section 214(g)(1)(A) of the Act, 8 U.S.C. § 1184(g)(1)(A). Section 214(g)(5)(A) of the Act states that the H-1B cap shall not apply to any nonimmigrant individual issued a visa or otherwise provided status under section 101(a)(15)(H)(i)(b) of the Act who “is employed (or has received an offer of employment) at an institution of higher education (as defined in . . . (20 U.S.C. [§] 1001(a)), or a related or affiliated nonprofit entity”

The regulation at 8 C.F.R. § 214.2(h)(8)(ii)(F)(2)(iv) currently defines “affiliated or related nonprofit entity” for purposes of the H-1B cap exemption as follows:

The nonprofit entity has entered into a formal written affiliation agreement with an institution of higher education that establishes an active working relationship between the nonprofit entity and the institution of higher education for the purposes of research or education, and a fundamental activity of the nonprofit entity is to directly contribute to the research or education mission of the institution of higher education.

See Retention of EB-1, EB-2, EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers, 81 Fed. Reg. 82398, 82443-45 (Nov. 18, 2016) (to be codified at 8 C.F.R. pts. 204, 205, 214, 245 and 274a).¹

II. ANALYSIS

Upon our review of the entire record of proceedings, including the response to our RFE, we conclude that the Petitioner has now established by a preponderance of the evidence that it is an “affiliated or related nonprofit entity” as defined at 8 C.F.R. § 214.2(h)(8)(ii)(F)(2)(iv). Accordingly, the Petitioner has established eligibility for an exemption from the FY16 H-1B numerical cap.

As a public school system, the Petitioner meets the threshold requirement of being a nonprofit entity. Having met that condition, we turn to the regulation at 8 C.F.R. § 214.2(h)(8)(ii)(F)(2)(iv), which has two prongs that must be satisfied. First, the Petitioner must establish that it has entered into a formal written affiliation agreement with an institution of higher education that establishes an active working relationship between the nonprofit entity and the institution of higher education for the purposes of research or education. Second, the Petitioner must also establish that one of its fundamental activities is to directly contribute to the research or education mission of the institution of higher education.

The record contains written affiliation agreements between the Petitioner and [REDACTED] that establish an active working relationship for the purposes of research or education. Specifically, the Petitioner submitted copies of formal affiliation agreements between itself and [REDACTED] that govern three particular academic programs. The record, therefore, satisfies the first prong of 8 C.F.R. § 214.2(h)(8)(ii)(F)(2)(iv).

The record also contains evidence sufficient to satisfy the second prong of 8 C.F.R. § 214.2(h)(8)(ii)(F)(2)(iv). The Petitioner has established by a preponderance of the evidence that one of its fundamental activities is to directly contribute to [REDACTED] research or education mission.

For example, the Petitioner explains on motion that sixty percent of its teachers and staff members are involved in a jointly-administered clinical program, which dates to 1939, and that more than 11,000 of its 30,500 students attend classes connected to the program. The Petitioner also describes in probative detail the symbiotic significance of each of the programs, which collectively constitute

¹ A parallel definition also exists at 8 C.F.R. § 214.2(h)(19)(iii)(B)(4) for purposes of exemption from certain H-1B filing fees.

the “active working relationship” between the two entities, and emphasizes their importance not just to [REDACTED] but to the Petitioner itself. The Petitioner further explains that because nearly half of the students graduating from its school system eventually enroll at [REDACTED] the two entities have developed a longstanding, mutual relationship in which they contribute to each other’s education mission. In sum, the evidence of record now establishes that one of the Petitioner’s fundamental activities is to directly contribute to [REDACTED] education mission. The Petitioner, therefore, has satisfied the second prong of 8 C.F.R. § 214.2(h)(8)(ii)(F)(2)(iv).

As the Petitioner has now satisfied 8 C.F.R. § 214.2(h)(8)(ii)(F)(2)(iv), we withdraw the Director’s finding that the Beneficiary is subject to the FY16 H-1B cap. We find additionally that the proffered position is a specialty occupation, and that the Beneficiary is qualified to perform the duties of this specialty occupation.²

III. CONCLUSION

We conclude that the Beneficiary is not subject to the FY16 H-1B cap and that all other eligibility criteria have been met. Given our disposition of the appeal, we need not address the Petitioner’s additional arguments. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (noting “agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”).

ORDER: The motion to reopen is granted and the appeal is sustained.

Cite as *Matter of L-P-S-* [REDACTED], ID# 666710 (AAO Oct. 20, 2017)

² The Beneficiary’s certification to teach in the State of Louisiana is valid throughout the entire period of requested petition validity.