



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

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

MATTER OF C-T-, INC.

DATE: SEPT. 28, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, who manufactures, designs, and modifies components for the aerospace industry, sought to employ the Beneficiary as a “Sales Department Operations Manager” 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.

After initially approving the petition, the Director of the Vermont Service Center issued a notice of intent to revoke and subsequently revoked the approval of the petition, concluding that the Petitioner did not establish that the Beneficiary was eligible for the cap exemption at the time of filing.

On appeal, the Petitioner submits additional evidence and asserts that the revocation was in error.

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

I. LEGAL FRAMEWORK

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. This numerical cap on H-1B visas is commonly referred to as the “H-1B cap.” In addition, section 214(g)(5)(c) of the Act provides that “[t]he [H-1B] numerical limitations . . . shall not apply to any nonimmigrant alien issued a[n H-1B] visa or otherwise provided [H-1B status] who . . . 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.” This is commonly referred to as the “master’s cap exemption.”

An “institution of higher education” is defined, in pertinent part, as an educational institution in any State that is a public or other nonprofit institution.¹

II. ANALYSIS

For the reasons discussed below, upon review of the record,² we agree with the Director’s decision to revoke the approval of the petition. Specifically, we find that the Petitioner has not established that the [REDACTED] where the Beneficiary earned her master’s degrees, was a public or nonprofit institution, and therefore, did not meet the definition of a U.S. institution of higher education.³

On appeal, the Petitioner argues that the revocation was “in error because in addition to her previously submitted Master of Business Administration Degree, [the Beneficiary] now has a Master of Science degree in Accounting from the [REDACTED].” Not only did the Beneficiary not receive the degree until December 21, 2014,⁴ more than eight months after the date of filing the petition, but the Petitioner has not established that [REDACTED] is a public or nonprofit institution.

Without evidence that the Beneficiary earned a master’s degree from a U.S. institution of higher education by April 2, 2014, the date of the filing of the H-1B petition, the Petitioner has not established that the Beneficiary was eligible for the master’s cap exemption.⁵ Therefore, the Director properly revoked the petition pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(2), (4), and (5).

III. CONCLUSION

The Petitioner has not established the Beneficiary’s eligibility for the master’s cap exemption, and therefore, has not overcome the Director’s ground for revocation.

ORDER: The appeal is dismissed.

Cite as *Matter of C-T-, Inc.* ID# 825483 (AAO Sept. 28, 2017)

¹ 20 U.S.C. § 1001(a) (2012) (originally enacted as the Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219) (“Higher Education Act”) (emphasis added).

² While we may not discuss every document submitted, we have reviewed and considered each one.

³ We also note that [REDACTED] lost its accreditation in 2008.

⁴ The Petitioner must establish the Beneficiary’s eligibility at the time of filing the nonimmigrant visa petition and must continue to be eligible for the benefit through adjudication. 8 C.F.R. § 103.2(b)(1).

⁵ The regulations generally do not permit H-1B petitioners to claim eligibility under alternative grounds: “[p]etitions indicating that they are exempt from the numerical limitation but that *are determined* by USCIS *after the final receipt date* to be subject to the numerical limit will be denied . . .” See 8 C.F.R. § 214.2(h)(8)(ii)(B) (emphasis added).