U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-S- INC

DATE: JAN. 11, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a software development and consulting firm, seeks to temporarily employ the Beneficiary as a "programmer analyst" 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 revoked the petition's approval pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(5). The Director concluded that the approval of this petition violated paragraph (h) of this section and amounted to gross error. Specifically, the Petitioner and another employer, which we will refer to as C- LLC, filed H-1B petitions for the same Beneficiary, and they appeared to be related entities with no legitimate business need to file multiple H-1B petitions in violation of 8 C.F.R. § 214.2(h)(2)(i)(G).

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred in its determination that the Petitioner and C- LLC are related entities.

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

I. MULTIPLE H-1B FILINGS

Pursuant to section 214(g)(1)(A) of the Act, the total number of H-1B visas issued per fiscal year generally may not exceed 65,000.[1] Section 214(g)(5) of the Act provides a separate numerical limit of 20,000 for nonimmigrants who have earned a master's or higher degree from a United States institution of higher education.[2] This overall numerical limitation on H-1B visas is commonly known as "the cap."

[1] The 65,000 cap has been increased in various years.

[2] Section 214(g)(5) of the Act also provides exemptions for certain nonimmigrants from the general numerical limits.

U.S. Citizenship and Immigration Services (USCIS) processes H-1B petitions under the cap in the order in which they are filed, until the numerical limitation has been reached. 8 C.F.R. § 214.2(h)(8)(ii)(B). When the demand for H-1B visas exceeds the total number of H-1B visas available per fiscal year, USCIS utilizes a random lottery selection system to choose which petitions are processed. *Id.* Petitions which are not selected for processing under this lottery system are rejected. *Id.*

To ensure the fair and orderly allocation of cap numbers, *id.*, 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.

II. BACKGROUND

In the Form I-129, Petition for a Nonimmigrant Worker, and the supporting documentation, the Petitioner described itself as a software development and consulting company. The Petitioner seeks to employ the Beneficiary as a "programmer analyst" on a full-time basis. The Beneficiary will not work at the Petitioner's business premises. Instead, the Petitioner will assign him to an end-client in another state for the entire validity period requested. The record reflects that the Beneficiary's assignment to the end-client is contracted through two different vendors. The Director initially approved the petition based upon the evidence of record.

Subsequently, the Director issued the Petitioner a notice of intent to revoke (NOIR), stating that the approval involved gross error. Specifically, the Director found that the Petitioner and C- LLC filed H-1B petitions for the same Beneficiary, and they appear to be related entities that filed multiple H-1B petitions in violation of 8 C.F.R. § 214.2(h)(2)(i)(G).[3] The Director observed that the petitions

[3] The file number for the petition filed by C- LLC is

were filed for the Beneficiary to work in the same position for the same end client through the same two vendors. The Director additionally observed the similar, and at times identical, evidence submitted by the two petitioners for the Beneficiary.

In response to the NOIR, the Petitioner asserted that it is not a related entity to C- LLC. The Petitioner submitted separate articles of incorporation, corporate by-laws, stock certificate, stock transfer ledger, operating agreement, federal employer identification number information (FEIN), federal tax return, and lease for its company and C- LLC. The Petitioner also submitted a copy of USCIS's notice acknowledging C- LLC's withdrawal of its petition for the Beneficiary, dated after the Director's initial approval of this petition.

The Director revoked the approval of the petition. In its revocation notice, the Director acknowledged that the Petitioner and C- LLC have separate FEINs, operation locations, management, and ownership. The Director found that the Petitioner and C- LLC are not related to each other as a parent company, subsidiary, or affiliate. But based on the similarities between the two positions and petitions, the Director concluded that the Petitioner and C- LLC are nevertheless "related" for purposes of the prohibition against multiple petitions at 8 C.F.R. § 214.2(h)(2)(i)(G).

On appeal, the Petitioner asserts that term "related entities" at 8 C.F.R. § 214.2(h)(2)(i)(G) refers only to *legally* related entities, such as affiliates, subsidiaries, or a parent company. The Petitioner disagrees with the Director's interpretation of 8 C.F.R. § 214.2(h)(2)(i)(G) to include companies which can be found related for a number of unspecified reasons, notwithstanding the lack of a legal corporate relationship.

III. ANALYSIS

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

In our view, the Petitioner is a "related" entity to C- LLC. The Petitioner and C- LLC are both requesting full-time work for the Beneficiary to work in the same position for the same end-client through the same vendors during essentially the same period of time.[4] Beyond these fundamental factors, the Petitioner and C- LLC submitted identical or almost identical documentation to support their petitions, including the same end-client and vendor letters. C- LLC's petition even contained a copy of its Subcontractor Agreement with the Petitioner – executed less than one month before the instant H-1B petition was filed – demonstrating an ongoing business relationship between the two companies. These factors are more than sufficient to support the conclusion that the Petitioner is "related" to C- LLC within the context of 8 C.F.R. § 214.2(h)(2)(i)(G).

[4] The Petitioner's requested validity period was October 1, 2014 to September 1, 2017. C- LLC's requested validity period was October 1, 2014 to September 2, 2017, which differed by only one day.

The Petitioner claims that it and Company A are not "related" within the meaning of 8 C.F.R. § 214.2(h)(2)(i)(G) because they are not legally related as a parent, subsidiary, or affiliate entities. While we agree that the Petitioner and Company A have separate FEINs and ownership, we do not believe this is sufficient to establish that they are not "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.[5] 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) (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)).

For purposes of 8 C.F.R. § 214.2(h)(2)(i)(G), the term "related entities" must be construed broadly enough to include petitioners acting in concert to file multiple duplicative petitions for the same beneficiary. Again, these petitioners do not have to be linked to each other as a parent company, subsidiary, or affiliate, or through other types of legally recognized corporate relationships. If we were to limit 8 C.F.R. § 214.2(h)(2)(i)(G) to only *legally* related entities as the Petitioner proposes, then the regulation's primary purpose to curb abuse of the random lottery system could continue to be easily frustrated.

The Petitioner is concerned with an overly broad reading of 8 C.F.R. § 214.2(h)(2)(i)(G) to include companies which can be found "related" for any number of "unspecified reasons." The Petitioner's concerns are misplaced. This provision's prohibition does not apply to all "related" petitioners, but rather, to those that cannot demonstrate a "legitimate business need" to file more than one H-1B petition on behalf of the same alien." 8 C.F.R. § 214.2(h)(2)(i)(G). In other words, this provision sets forth a rebuttable presumption. The petitioner still has the opportunity and burden to overcome this rebuttable presumption and demonstrate that, more likely than not, it has a "legitimate business need" to file a multiple, duplicative petition for the same beneficiary.

Here, the Petitioner has not met its burden of demonstrating its legitimate business need. The Petitioner's responses to the Director's NOIR and appeal brief focus solely on whether or not the Petitioner is "related" to C- LLC. The Petitioner still has not explained why it needed to file a

[5] 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 Jan. 10, 2018).

duplicative petition for the Beneficiary, for the same full-time position with the same end client through the same vendors during the same time frame, as the petition filed by C- LLC. The Petitioner has not overcome the rebuttable presumption posed by 8 C.F.R. § 214.2(h)(2)(i)(G).

Because the Petitioner is a "related" entity to C- LLC and has not demonstrated a "legitimate business need" to file a multiple petition for the Beneficiary, the instant petition should have been denied pursuant to 8 C.F.R. § 214.2(h)(2)(i)(G). The approval of the petition violated paragraph (h) of this section and involved gross error, and the Director properly revoked the approval of the petition pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(*5*).

Finally, we note that C- LLC's withdrawal of its duplicate petition for the Beneficiary did not solve the Petitioner's 8 C.F.R. § 214.2(h)(2)(i)(G) problem. C- LLC withdrew its petition *after* the Director had already approved this petition. Under these circumstances, the withdrawal was not timely, and therefore, did not relieve the Petitioner of its burden under 8 C.F.R. § 214.2(h)(2)(i)(G).[6]

IV. CONCLUSION

The Petitioner and a related entity filed multiple H-1B petitions for the Beneficiary and did not demonstrate a legitimate business to do so. The Director properly revoked the approval of the petition pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(*5*).

ORDER: The appeal is dismissed.

Cite as *Matter of S-S- Inc*, ID# 96306 (AAO Jan. 11, 2018)

[6] We decline to address the more general question of what constitutes a timely withdrawal for purposes of 8 C.F.R. § 214.2(h)(2)(i)(G).