



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 14 2015**

PETITION RECEIPT#: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

I. PROCEDURAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a law practice. In order to employ the beneficiary in a position it designates as a law clerk position, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis that the record did not establish that the beneficiary qualifies for an exemption from the H-1B numerical limitation for the 2015 fiscal year (FY15) pursuant to section 214(g)(5)(C) of the Act. Thereafter, the petitioner filed an appeal.

We base our decision upon our review of the entire record of proceeding, which includes: (1) the Form I-129 and the supporting documentation; (2) the director's request for evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Notice of Appeal or Motion (Form I-290B) and supporting documentation.

II. LAW

In general, H-1B visas are numerically capped by statute. 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 (hereinafter referred to as the "H-1B Cap"). In addition, the maximum number of H-1B visas that may be issued per fiscal year pursuant to the H-1B cap exemption at section 214(g)(5)(C) of the Act may not exceed 20,000 ("U.S. Master's Degree or Higher Cap").

Section 214(g)(5) of the Act states, in pertinent part:

The numerical limitations . . . shall not apply to any nonimmigrant alien issued a visa or otherwise provided [H-1B status] who –

- (A) is employed (or has received an offer of employment) at an institution of higher education (as defined in section 1001(a) of Title 20), or a related or affiliated nonprofit entity.
- (B) is employed (or has received an offer of employment) at a nonprofit research organization or a governmental research organization; or

- (C) 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.

Notably, 8 C.F.R. § 214.2(h)(8)(ii)(B) states, in part:

Petitions 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 and filing fees will not be returned and refunded.

III. PROFFERED POSTION

In a letter dated March 28, 2014, the petitioner described the duties of the proffered position as follows:

1. Assisting supervising attorneys with legal research in US, UK, European and Asian law, using primary and secondary sources of law, including legal articles, statutes, treaties, regulations and ordinances to prepare memorandum, briefs, motions and appeals;
2. Working under supervising attorneys to prepare legal and factual documents, including depositions, written discoveries, subpoenas, witness statements and declarations, and trial preparation petitions, complaints, answers and cross-complaints;
3. Translating memoranda, correspondence, legal and factual documents into German, Spanish and Indian dialects for foreign clients and litigation.

IV. EVIDENCE

At Part C of the Form I-129 H-1B Data Collection Supplement, the petitioner checked box "1b" to indicate that it was applying for "U.S. Master's Degree or Higher" cap exemption. At item "2" of that section, the petitioner indicated that the beneficiary received a Master of Laws degree from [REDACTED] California. In support, the petitioner submitted a certificate which states, [REDACTED] Awards this Certificate to [the beneficiary] In Recognition of Completion of Coursework in the General LL.M. Post Graduate Program in [REDACTED] California." An academic transcript from [REDACTED] indicates that the beneficiary took courses from August 15, 2011 to May 11, 2012. The beneficiary completed 24 units and had a cumulative GPA of 2.113.

V. ANALYSIS

Upon review of the record of proceeding, we find that the petitioner has not established that this petition is eligible for the U.S. master's degree cap exemption. Under Section 214(g)(5) of Act, general H-1B cap does not apply to a nonimmigrant alien that holds a master's degree or higher from a United States institution of higher education as defined in section 101(a) of the Higher Education Act (HEA) of 1965.

The petitioner claims that the beneficiary received a Master of Laws degree from [REDACTED] California. However, the record of proceeding contains a "certificate" for the beneficiary from [REDACTED], which states that it is awarded "In Recognition of Completion of Coursework in General LL.M."; in other words, it indicates that it is a certificate of completion of the General LL.M. program, not that the beneficiary was awarded an LL.M. degree.

In the decision denying the petition, the director referred to page 53 of the [REDACTED] 2013-2014 Student Handbook.² The director noted the following section, which states:

An LL.M. student with a foreign law degree who is taking graded courses for the purpose of sitting for the California Bar Exam and does not attain a GPA of 2.330, but receives a passing letter grade (D- or above) in at least 24 units, will be awarded a Certificate of Completion. LL.M. students must meet all other academic requirements set forth in Section 1 of the *Student Handbook*.

The beneficiary's academic transcript indicates that the beneficiary completed the program at [REDACTED] with a cumulative GPA of 2.113. The transcript further indicates "certificate earned 05/12." This is consistent with the information from the [REDACTED] Student Handbook, which indicates that a student who does not attain a GPA of 2.330 will be awarded a Certificate of Completion, rather than an LL.M. degree.³

On appeal, the petitioner submitted a letter from Ms. [REDACTED] Assistant Dean for general LL.M. at [REDACTED]. The letter states the following, in part:

² Although the 2013-2014 edition of the law school's Student Handbook is no longer readily available, we note that the current handbook makes the same statement pertinent to grading in its Entertainment and Media Law Program. [REDACTED] (last visited April 13, 2015).

³ Specifically, the director also referred to the section which states that "[g]eneral LL.M. students who graduated from U.S. law schools and those with foreign law degrees who opt for the letter grading system, must attain a cumulative GPA of 2.330 to earn the LL.M. degree." While the beneficiary did not graduate from U.S. law school and this provision is not directly applicable to the instant case, this section demonstrates the school's policy that the students in the LL. M. program must earn a GPA of 2.330 to receive earn the LL. M. degree.

All courses offered in the LL.M. program are at the master's degree level. Students in the program who take these courses using the non-letter grading system and who receive a passing grade are awarded the master's degree. [The beneficiary] completed 24 units of master's level courses required for the LL.M. degree and received a passing grade in all of the courses, satisfying the admission and eligibility requirements to sit for the California Bar Exam.

Ms. [REDACTED] letter does not indicate that the beneficiary was awarded an LL.M. degree; rather, it states that the beneficiary completed 24 units of mater's level courses and received a passing grade, and is eligible to sit for the California Bar Exam. However, if Ms. [REDACTED] had stated that the beneficiary was awarded an LL.M. degree, it would contradict the information contained in the Student Handbook, and the petitioner did not submit any other relevant evidence to dispute the information in the Student Handbook. We note that it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The evidence is insufficient to establish that the beneficiary has a U.S. Master's degree as claimed on the visa petition and is insufficient, therefore, to demonstrate that she is eligible for the master's cap exemption. Under 8 C.F.R. 214.2(h)(8)(ii)(B), the petitions indicating that they are exempt from the numerical limitation but are determined by USCIS after the final receipt date to be subject to the numerical limit will be denied. Since the petitioner has not established that the beneficiary is exempt from the H-1B cap and the numerical limit has been reached, this petition will be denied.⁵

VI. ADDITIONAL BASIS

The record suggests an additional issue that was not addressed in the decision of denial but that, nonetheless, also precludes approval of this visa petition.

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) stipulates the following:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

⁵ We note that, when it was submitted, the visa petition could have been submitted for approval pursuant to the general H-1B cap, but it was not. This petition was filed on April 2, 2014 requesting a U.S. master's degree or higher cap exemption. On April 7, 2014, USCIS issued a notice that it had received sufficient numbers of H-1B petitions to reach both the H-1B Cap and the U.S. Master's Degree or Higher Cap for fiscal year (FY) 2015 as of that date. As previously noted, 8 C.F.R. 214.2(h)(8)(ii)(B) states that the petitions indicating that they are exempt from the numerical limitation but are determined by USCIS after the final receipt date to be subject to the numerical limit will be denied.

While the U.S. Department of Labor (DOL) is the agency that certifies LCAs before they are submitted to USCIS, the DOL regulations note that it is within the discretion of the U.S. Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) to determine whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification. . . .

The LCA submitted with the visa petition is certified for a position described at SOC code and title 23-1012, Judicial Law Clerks of O*NET. As described in that section of O*NET, judicial law clerks, "[a]ssist judges in court or by conducting research or preparing legal documents." Notably, the petitioner indicated in the Form I-129 that it is a law practice, not a court. Further, the duties of the proffered position do not include assisting judges in the business of the court. As such, the proffered position has been misclassified on the LCA. The LCA does not correspond to the instant visa petition.⁶ The visa petition must be denied for this additional reason.

VII. CONCLUSION

An application or petition that fails to comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of the enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

⁶ A determination of the correct O*NET classification of the proffered position is not necessary to reach the decision that it is not a Judicial Law Clerk position. However, we observe that, to the extent they are described in the record, the duties of the proffered position suggest that the proffered position is either a position described in O*NET at 23-2011.00 - Paralegals and Legal Assistants or at 23-1011.00 - Lawyers. We further observe that according to the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, paralegal and legal assistant positions do not qualify as specialty occupation positions, as a bachelor's degree or its equivalent in a specific specialty is not the minimum entry requirement for the occupation. *See the Handbook*, 2014-15 ed., "Paralegals and Legal Assistants," <http://www.bls.gov/ooh/legal/paralegals-and-legal-assistants.htm#tab-4> (last visited April 13, 2015).



The director's decision will be affirmed and the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision.⁷ In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition is denied.

⁷ As the grounds discussed above are dispositive of the petitioner's eligibility for the benefit sought in this matter, we will not address and will instead reserve our determination on the additional issues and deficiencies that we observe in the record of proceeding with regard to the approval of the H-1B petition.