



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

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

MATTER OF C-T-S-U.S. CORP.

DATE: OCT. 30, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a computer and software consulting firm, seeks to employ the Beneficiary as a manager and to classify him as a nonimmigrant worker in a specialty occupation. *See* Immigration and Nationality Act (the Act) § 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, California Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. PROCEDURAL AND FACTUAL BACKGROUND

The Beneficiary was initially admitted into the United States on December 3, 2006, as an L-1B specialized knowledge employee for the Petitioner. The Beneficiary was subsequently admitted into the United States on November 5, 2010, as an L-1A managerial or executive employee for the Petitioner.¹ On January 26, 2012, the Petitioner filed a Form I-140, Immigrant Petition for Alien Worker on behalf of the Beneficiary, which was approved on March 22, 2012, with an August 22, 2011, priority date. On April 1, 2014, the Petitioner filed the instant petition requesting that the Beneficiary's status be changed on October 1, 2014, from L-1A nonimmigrant classification to H-1B nonimmigrant classification and that his stay in the United States be extended until June 15, 2017. In particular, the Petitioner is requesting that the Beneficiary's stay be extended beyond the six-year limitation contained in section 214(g)(4) of the Act, 8 U.S.C. § 1184(g)(4), pursuant to section 104(c) of the "American Competitiveness in the Twenty-First Century Act" (AC21).² *See* Pub. L. No. 106-313, §§ 104(c) and 106(a), (b), 114 Stat. 1251, 1253-54 (2000); Pub. L. No. 107-273, § 11030A(a), 116 Stat. 1836 (2002).

The Petitioner submitted evidence confirming that the Form I-140 filed by the Petitioner on the Beneficiary's behalf has been approved, and that there were no eligible visa numbers for the third preference immigrant visa category for individuals born in India when the instant petition was filed. The Beneficiary reached the maximum allowed time in "H or L" status pursuant to the regulation at

¹ The Beneficiary reached his seven-year maximum period of stay permitted in L-1A classification, with recaptured time, on June 17, 2014. *See* section 214(c)(2)(D) of the Act, 8 U.S.C. § 1184(c)(2)(D); 8 C.F.R. § 214.1(l)(12).

² If the Beneficiary were in H-1B classification, he would have reached the six-year maximum period of authorized admission for an H-1B nonimmigrant on June 17, 2013. *See* section 214(g)(4) of the Act; 8 C.F.R. § 214.2(h)(13)(iii)(A).

8 C.F.R. § 214.2(h)(13)(iii)(A) prior to the requested start date of October 1, 2014. The record does not show that, at the time the instant petition was filed, the Beneficiary had been present outside the United States for the immediate prior year.

II. ISSUE

The issue before us is whether the Petitioner has established that the Beneficiary is entitled to an exemption from the limitations imposed on extensions of stay for H-1B nonimmigrants.

III. LEGAL FRAMEWORK

Section 214(g)(4) of the Act, 8 U.S.C. § 1184(g)(4) provides: “In the case of a nonimmigrant described in section 101(a)(15)(H)(i)(b), the period of authorized admission as such a nonimmigrant may not exceed 6 years.” Section 106(a) and 104(c) of the AC21 as amended by the “Twenty-First Century Department of Justice Appropriations Authorization Act” (DOJ21) temporarily removes the six-year limitation on the authorized period of stay in H-1B classification for foreign nationals under certain conditions.

More specifically, an exemption is available under section 106(a) of AC21 for certain foreign nationals whose labor certifications or immigrant petitions remain undecided due to lengthy adjudication delays. *See* Pub. L. No. 106-313, § 106(a), 114 Stat. 1251, 1253-54 (2000); Pub. L. No. 107-273, § 11030A(a), 116 Stat. 1836 (2002). According to the text of section 106(b) of AC21, foreign nationals may have their “stay” extended in the United States in one-year increments pursuant to an exemption under section 106(a) of AC21.

As amended by section 11030A(a) of DOJ21, section 106(a) of AC21 reads:

(a) EXEMPTION FROM LIMITATION. -- The limitation contained in section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. § 1184(g)(4)) with respect to the duration of authorized stay shall not apply to any nonimmigrant alien previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of *such Act* (8 U.S.C. § 1101(a)(15)(H)(i)(b)), if 365 days or more have elapsed since *the filing of any of the following*:

(1) *Any application for labor certification under section 212(a)(5)(A) of such Act (8 U.S.C. § 1182(a)(5)(A)), in a case in which certification is required or used by the alien to obtain status under section 203(b) of such Act (8 U.S.C. § 1153(b)).*

(2) *A petition described in section 204(b) of such Act (8 U.S.C. § 1154(b)) to accord the alien a status under section 203(b) of such Act.*

Section 11030A(b) of DOJ21 amended section 106(b) of AC21 to read:

(b) EXTENSION OF H-1B WORKER STATUS--The [Secretary of Homeland Security] shall extend the stay of an alien who qualifies for an exemption under subsection (a) in one-year increments until such time as a final decision is made—

(1) to deny the application described in subsection (a)(1), or, in a case in which such application is granted, to deny a petition described in subsection (a)(2) filed on behalf of the alien pursuant to such grant;

(2) to deny the petition described in subsection (a)(2); or

(3) to grant or deny the alien's application for an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence.

Pub. L. No. 106-313, § 106(a) and (b), 114 Stat. 1251, 1253-54 (2000); Pub. L. No. 107-273, § 11030A, 116 Stat. 1836, 1836-37 (2002) (emphasis added to identify sections amended by DOJ21). A delay of 365 days or more in the final adjudication of a filed labor certification application or employment based immigrant petition under section 203(b) of the Act is considered “a lengthy adjudication delay” for purposes of this exemption. *See* Pub. Law No. 107-273, 116 Stat. at 1836.

IV. DISCUSSION

Upon review of the record of proceeding, we find that the Petitioner has not established that the Beneficiary is eligible for an extension of stay in the United States pursuant to section 104(c) of the AC21. That is because section 104(c) of AC21 applies only to an individual described in section 214(g)(4) of the Act, i.e., an individual accorded H-1B status pursuant to section 101(a)(15)(H)(i)(b) of the Act. The Beneficiary is not an individual described in section 214(g)(4) of the Act, as he does not have and has never been accorded H-1B status.

The starting point for our analysis is the language of the statute. Section 104(c) of AC21 begins by specifically referring to section 214(g)(4) of the Act, which in turn specifically refers to “a nonimmigrant described in section 101(a)(15)(H)(i)(b).” We interpret the specific reference to section 214(g)(4) of the Act as framing and limiting the applicability of section 104(c) of AC21 to only to an individual described in section 214(g)(4) of the Act. Moreover, we interpret the specific reference to “a nonimmigrant described in section 101(a)(15)(H)(i)(b)” to determine that section 214(g)(4) of the Act refers *exclusively* to an H-1B nonimmigrant.

Here, the Petitioner asserts that section 104(c) of AC21 is not limited to H-1B nonimmigrants. The Petitioner states that the term “any alien” in section 104(c) should be broadly interpreted as including any individual in any nonimmigrant status. However, the Petitioner’s proposition is not supported by the language of the statute. The term “any alien” in section 104(c) must be read together with, and qualified by, the immediate preceding phrase “[n]otwithstanding section

214(g)(4) of the Immigration and Nationality Act.” That is, the term “any alien” does not broadly refer to any individual in any nonimmigrant status, but rather, to any individual described in section 214(g)(4) of the Act, i.e., an individual in H-1B status. In addition, the term “any alien” in section 104(c) must be read together with the subsequent phrase “an extension of such nonimmigrant status.” The word “such” would be rendered meaningless if we were too broadly interpret the term “any alien” to refer to any individual in any nonimmigrant status. The most reasonable reading of the word “such” is that it refers back to a nonimmigrant as described in section 214(g)(4) of the Act, i.e., an individual in H-1B status. In other words, section 104(c) should be read as stating that any individual described in section 214(g)(4) of the Act may apply for, and be granted, an extension of such H-1B status. We also do not see how an individual who is not in H-1B status could reasonably be granted an *extension* of H-1B status under the ordinary meaning of the word “extension” (as opposed to, for example, a *change* of status).

Statutory language must be given conclusive weight unless the legislature expresses an intention to the contrary. *Int’l Bhd. of Elec. Workers, Local Union No. 474, AFL-CIO v. NLRB*, 814 F.2d 697 (D.C. Cir. 1987). The plain meaning of the statutory language should control except in rare cases in which a literal application of the statute will produce a result demonstrably at odds with the intent of its drafters, in which case it is the intention of the legislators, rather than the strict language, that controls. *Samuels, Kramer & Co. v. CIR*, 930 F.2d 975 (2d Cir.) We are expected to give the words used in their ordinary meaning. *See Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*

The Petitioner’s contention that the Beneficiary’s time spent in L status should be treated as identical to time spent in H-1B status for purposes of determining that the Beneficiary is an individual described in section 214(g)(4) of the Act is untenable. The Petitioner asserts that “L-1 status is treated essentially identical to H-1B status” by virtue of 8 C.F.R. § 214.2(h)(13)(iii)(A), which states, in pertinent part, that an individual “who has spent six years in the United States under section 101(a)(15)(H) and/or (L) of the Act may not seek extension, change status, or be readmitted to the United States under section 101(a)(15)(H) or (L) of the Act.” However, we cannot find that 8 C.F.R. § 214.2(h)(13)(iii)(A) effectively extends section 214(g)(4) of the Act to apply to L nonimmigrants. The Petitioner’s position in this matter is not supported by statutory or regulatory authority. To the contrary, we find that the Act contains separate provisions regarding the maximum admission periods for H-1B and L nonimmigrants: section 214(g)(4) of the Act (for H-1B nonimmigrants), and section 214(c)(2)(D) of the Act (for L nonimmigrants). Likewise, the regulations separately address the maximum periods of admission for H-1B and L nonimmigrants. *Compare* 8 C.F.R. § 214.1(l)(12) (setting forth limitations on period of stay for L nonimmigrants) *with* 8 C.F.R. § 214.2(h)(13)(iii)(A) (for H-1B nonimmigrants). That the statute and regulations separately address the maximum admission periods for H-1B and L nonimmigrants undermines the Petitioner’s assertion that L and H-1B status should be treated identically.

Furthermore, the Petitioner has not presented persuasive arguments or supporting documentation demonstrating that Congress intended to extend the provisions of section 104(c) to any classification other than the H-1B classification. The Petitioner claims that excluding L nonimmigrants from section 104(c) would be contrary to “the purpose of AC21.” However, the legislative history

indicates that AC21 was specifically intended to provide relief to H-1B nonimmigrants. The legislative history discussing section 104(c) of AC21 does not reference the L or any classification other than the H-1B classification. Notably, the title of Public Law 106-313 begins as: “An Act: To amend the Immigration and Nationality Act with respect to H-1B nonimmigrant aliens.”³ We are to construe the language in question in harmony with the thrust of related provisions and with the statute as a whole. See *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); see also *COIT Independence Joint Venture v. Fed. Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996).

Furthermore, as previously noted, Section 104(c) of AC21 begins by specifically referring to section 214(g)(4) of the Act; it does not reference section 214(c)(2)(D) of the Act. The title of the statute and its specific reference to section 214(g)(4) of the Act, to the exclusion of section 214(c)(2)(D) of the Act, further undermines the Petitioner’s position that excluding L nonimmigrants from section 104(c) would be contrary to “the purpose of AC21.” If Congress had specifically intended to include L or other nonimmigrants in section 104(c) of AC21, it could and would have done so.⁴

The Petitioner states, “Had Congress intended that extensions under Section 104(c) of AC21 be limited to only individuals who had previously held H-1B status, it would have inserted the same restricting language in Section 104(c) that it included in Section 106(a).” The Petitioner acknowledges that section 106(a) of AC21 is “limited to only individuals who had previously held H-1B status.” However, the Petitioner’s reliance upon section 106(a) of AC21 is misplaced. As discussed above, the legislative history discussing section 104(c) of AC21, and AC21 more generally, exclusively references the H-1B classification. As such, it is more reasonable to construe section 104(c) consistently with section 106(a) and the rest of the statute as applying only to the H-1B classification.⁵ Again, we are to construe the language in question in harmony with the thrust

³ The full version of the statute may be accessed online at <http://www.gpo.gov/fdsys/pkg/PLAW-106publ313/pdf/PLAW-106publ313.pdf> (last visited Oct. 28, 2015).

⁴ For example, in drafting section 104(c) of AC21, Congress could have stated, “Notwithstanding section 214(g)(4) and section 214(c)(2)(D) of the Immigration and Nationality Act”

⁵ Finally, the Petitioner references the Interoffice Memorandum from Michael Yates, Associate Director, Domestic Operations, *Guidance on Determining Periods of Admission for Aliens Previously in H-4 or L-2 Status; Aliens Applying for Additional Periods of Admission beyond the H-1B Six Year Maximum; and Aliens Who Have Not Exhausted the Six-Year Maximum But Who Have Been Absent from the United States for Over One Year* (Dec. 5, 2006) and claims that it is relevant here. However, the sentence in the Yates Memorandum that “USCIS will focus on whether the alien is eligible for an additional period of admission in in H-1B status, rather than whether the alien is currently in H-1B status that is about to expire and is seeking an extension of that status,” does not support the conclusion that section 104(c) of AC21 extends beyond H-1B nonimmigrants. Notably, this sentence states that the individual must be “eligible for an additional period of admission in in H-1B status.” The use of the word “additional” implies that the individual must have had H-1B status to begin with. Furthermore, we note that the above sentence is found in the paragraph beginning with the following sentence, “In sections 106 and 104(c) of AC21, Congress provided exemptions to the six-year maximum period of stay rules for certain H-1B aliens.” We also observe the subsequent “note” which states that the Petitioner must establish the individual’s eligibility for “any additional periods of stay in H-1B status . . . including evidence of . . . previous H-1B status.” Thus, contrary to the petitioner’s assertion, it is not clear how an individual who has never had

of related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. at 291.

In short, the evidence of record is insufficient to establish that section 104(c) of AC21 extends to individual other than those described in section 214(g)(5) of the Act. Without statutory or regulatory authority, section 214(g)(4) of the Act encompasses only individuals accorded H-1B classification, and cannot be extended to other nonimmigrant classifications. Thus, an H-1B nonimmigrant is the only nonimmigrant eligible for an extension of such pursuant to section 104(c) of AC21. Consequently, we cannot find that the Beneficiary, who is not and has never been in H-1B status, is eligible for an extension of H-1B nonimmigrant status pursuant to section 104(c) of AC21.

V. CONCLUSION

The evidence of record does not establish that the Beneficiary is eligible for an extension of H-1B nonimmigrant status pursuant to section 104(c) of AC21. For this reason, the petition must be denied.

The Petitioner has not established eligibility for the benefit sought. 8 C.F.R. § 103.2(b)(1). In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.⁶

ORDER: The appeal is dismissed.

Cite as *Matter of C-T-S-U.S. Corp.*, ID# 12515 (AAO Oct. 30, 2015)

H-1B status could be eligible for periods of "additional" H-1B status and could submit evidence of his or her "previous" H-1B status.

⁶ As the identified ground of ineligibility is dispositive of the Petitioner's appeal, we need not address any additional issues we observe in the record of proceeding.