



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

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

MATTER OF P-T-A-, INC.

DATE: AUG. 25, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a benchmarking business, seeks to temporarily employ the Beneficiary as a business 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, Vermont Service Center, denied the petition. The Director concluded that the Petitioner did not establish a legitimate business need for filing multiple H-1B petitions for the same Beneficiary.

The matter is now before us on appeal. In its appeal brief, the Petitioner submits additional evidence and asserts that it provided sufficient evidence to establish a legitimate business need to file two H-1B petitions.

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

I. LAW

The regulation at 8 C.F.R. § 214.2(h)(2)(i)(G) states, in pertinent part, the following:

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. If an H-1B petition is denied, on a basis other than fraud or misrepresentation, the employer may file a subsequent H-1B petition on behalf of the same alien in the same fiscal year, provided that the numerical limitation has not been reached or if the filing qualifies as exempt from the numerical limitation. 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

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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. ANALYSIS

We reviewed the record in its entirety, including the H-1B petition filed by the Petitioner's affiliate, [REDACTED] (affiliate), and determine that the Director's decision to deny the petition pursuant to 8 C.F.R. § 214.2(h)(2)(i)(G) is correct.¹ Specifically, we find that the record does not establish that the Petitioner and its affiliate had a legitimate business need to each file an H-1B petition on behalf of the Beneficiary.

The Petitioner asserts that both the Petitioner and its affiliate have a "legitimate business need" to file an H-1B visa for the same Beneficiary because they provide "related but different services." For example, the Petitioner "provides a complete range of benchmarking services across a wide range of industries to companies around the world," such in-depth benchmark data analysis survey, modeling survey, performance improvement workshops, and business model evaluations. On the other hand, the Petitioner's affiliate "focuses on market research and consulting services on the chemicals, plastics, and other process industries," and publishes multiple studies each year covering regional, multi-regional and global views on issues most relevant to the plastics and related chemicals industry. In support, the Petitioner submitted documentary evidence including business profile, tax returns, and pay roll records.

However, the documentation in the record of proceedings does not demonstrate a materially distinct employment position for the Beneficiary to establish a legitimate business need.² Although the Petitioner states that the two entities provide different services, both H-1B petitions contain the exact same job duties. The Petitioner asserts that both entities use a "general job description for Business Analyst," and they both have employed individuals for such positions. However, in establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of its business operations, demonstrate a legitimate

¹ The file number for the petition filed by its affiliate is [REDACTED]. The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and the Petitioner's business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

² This position is documented in the supplementary information regarding a 2008 interim rule, which states "USCIS recognizes that an employer and one or more related entities (such as a parent, subsidiary or affiliate) may extend the same alien two or more offers for *distinct positions* and therefore have a legitimate need to file two or more separate H-1B petitions on behalf of the same alien." Petitions Filed on Behalf of H-1B temporary Workers Subject to or Exempt from the Annual Numerical Limitation, 73 Fed. Reg. 15389, 15392 (March 24, 2008) (to be codified 8 C.F.R. § 214.2(h)(2)(i)(G)) (emphasis added).

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need for an employee exists, and substantiate that it has H-1B caliber work for the Beneficiary for the period of employment requested in the petition.

Here, the Petitioner provided the same job description for both petitions while asserting that the services of the related entities differ, and did not sufficiently demonstrate specific duties and responsibilities to be performed in the context of each business operation. Further, the Petitioner acknowledges that the Petitioner and its affiliate are located in the same building, and share the same administrative staff and human resources support to reduce overhead cost. Notably, [REDACTED] Human Resources Manager, was the signatory for both H-1B petitions. Therefore, the Petitioner did not substantiate that the Beneficiary was offered two distinct employment opportunities for a legitimate business need. “[G]oing on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.” *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

The regulation at 8 C.F.R. § 214.2(h)(2)(i)(G) eliminates multiple H-1B filings in order to curtail duplicative and multiple petition filings by the same employer.³ Here, the Petitioner did not provide sufficient documentation to overcome the Director’s concerns that the Petitioner did not establish a legitimate business need to submit multiple H-1B petitions for the same Beneficiary.

III. CONCLUSION

The burden is on the Petitioner to show 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.

Cite as *Matter of P-T-A-, Inc.*, ID# 17596 (AAO Aug. 25, 2016)

³ “A subsidiary should not file an H-1B petition for an alien just to increase the alien’s chances of being selected for an H-1B number where that subsidiary has no legitimate need to employ the alien and is, instead, only filing a petition to facilitate the alien’s hiring by a different, although related subsidiary.” *Id.* at 15393.