



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

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

MATTER OF O-&S-, INC.

DATE: DEC. 23, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a firm that provides landscaping services and operates a nursery, seeks to extend the validity of the previously approved petition in order to continue to employ the Beneficiaries as “laborer-landscaping and groundskeeping workers” under the H-2B nonimmigrant classification. See Immigration and Nationality Act (the Act) § 101(a)(15)(H)(ii)(b), 8 U.S.C. § 1101(a)(15)(H)(ii)(b). The Director, California Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

**I. ISSUE**

The issue before us is whether the evidence of record supports the Director’s decision to deny the extension petition because it lacks an ETA Form 9142B, H-2B Application for Temporary Labor Certification (TLC), certified for the extension period sought by the Petitioner.<sup>1</sup>

**II. LEGAL FRAMEWORK**

Subparagraph (a) of the regulation at 20 C.F.R. § 655.55, *Validity of temporary labor certification*, limits the validity of a certified TLC to the period stated on the TLC. It reads:

*Validity period.* A temporary labor certification is valid only for the period as approved on the *Application for Temporary Employment Certification*. The certification expires on the last day of authorized employment.

The regulation at 8 C.F.R. § 214.2(6)(iii)(C) states the necessity of a certified TLC:

---

<sup>1</sup> We reviewed the record in its entirety before issuing our decision. We conduct appellate review on a *de novo* basis. *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015); see also 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989). We follow the preponderance of the evidence standard as specified in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

The petitioner may not file an H-2B petition unless [(1)] the United States petitioner has applied for a labor certification with the Secretary of Labor or the Governor of Guam within the time limits prescribed or accepted by each, and [(2)] has obtained a favorable labor certification determination as required by paragraph (h)(6)(iv) [regarding TLCs for locations other than Guam] or (h)(6)(v) of this section [regarding TLCs for Guam].

The regulation at 8 C.F.R. § 214.2(6)(iii)(E) identifies a certified TLC as a document that must accompany an H-2B petition at its filing:

After obtaining a favorable determination from the Secretary of Labor or the Governor of Guam, as appropriate, the petitioner shall file a petition on I-129, accompanied by the labor certification determination and supporting documents, with the director having jurisdiction in the area of intended employment.

In addition, the provision at 8 C.F.R. § 214.2(6)(vi)(A) identifies “an approved temporary labor certification” as evidence that must accompany an H-2B petition.

With regard to non-Guam TLCs, the regulation at 8 C.F.R. § 214.2(6)(iv)(B), *Validity of the labor certification*, states that the Secretary of Labor “may issue a temporary labor certification for a period of up to one year,” and the regulation at 8 C.F.R. § 214.2(6)(iv)(D), *Employment start date*, stipulates that, except in the case of an amended H-2B petition filed due to the unavailability of originally requested workers, “[b]eginning with petitions filed for workers for fiscal year 2010, an H-2B petition must state an employment start date that is the same as the date of need stated on the approved temporary labor certification.”

### III. FACTUAL BACKGROUND

At the time of filing the instant petition, the Beneficiaries were in H-2B status, pursuant to a petition that the Director had approved for the period from May 29, 2014 to September 30, 2014. According to the letter of support filed with the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner sought to extend the Beneficiaries’ H-2B classification to continue their previously approved employment for an additional period, i.e., October 1, 2014 to December 15, 2014.

While the documents accompanying the Form I-129 included a copy of the certified TLC filed with the previously approved petition, they did not include a TLC that had been certified for the period for which the extension was sought. The Director issued a request for additional evidence (RFE) seeking a TLC certified for the extension period. In pertinent part, the RFE requested that the Petitioner “submit another ETA Form-9142 certified by an official of the [U.S. Department of Labor (DOL)] prior to the filing of the instant petition for the request[ed] validity period.”

The Petitioner responded to the RFE by submitting a copy of the ETA Form 9141, Application for Prevailing Wage Determination, that DOL had issued for a validity period of February 11, 2014 to May 15, 2014.

On September 19, 2014 the Director denied the extension petition because it lacked a TLC certified for the extension period sought. The Director stated, in part, "On 8/25/2014 the petitioner was requested to provide an approved temporary labor certification. On 9/15/2014 the petitioner responded to the [RFE]; however, they did not submit an approved temporary labor certification."

The submissions on appeal include a letter from the Petitioner; a page listing the documents accompanying the letter; and copies of emails between the Petitioner and DOL, all transmitted on October 1, 2014.

The Petitioner's email to DOL reflects that the Petitioner mistakenly perceived that the Director denied the extension petition because it did not include the original TLC that had been certified for the previously approved petition. DOL responded with two emails. In the first, DOL notified the Petitioner of the protocol for requesting duplicate certified TLCs through our agency, United States Citizenship and Immigration Services (USCIS). DOL's second email informed the Petitioner that a TLC is certified only for the period of need that it specified.

In its letter on appeal, dated two days after the aforementioned emails, the Petitioner communicates its view that a DOL-provided duplicate of the TLC that had been certified for the previously approved petition would remedy the deficiency upon which the Director denied the petition. Accordingly, the letter requests that USCIS generate a request to DOL for a duplicate of that TLC. In pertinent part, the letter states:

We wish to appeal the denial and request that the USCIS request the document we were approved for, the Temporary Labor Certification (9142-B). We submitted the original 9142B approved certificate along with our I-129 application/petition as directed.

The DOL has stated that in order for the petition to be processed, they can supply a copy of the certificate approved by their department; however, it must be requested from the USCIS, for they cannot send a copy directly to the employer seeking it. So we are humbly seeking and requesting that the USCIS request this document from the DOL so that it will meet the requirements we are needing to allow our workers in the H2B program permission to extend their visitation and remain working under the H2B program.

We see no evidence in the record that the Petitioner had obtained any TLC certified for the additional approval period specified in the extension petition.<sup>2</sup>

---

<sup>2</sup> Also, we searched the public disclosure data that DOL's Office of Foreign Labor Certification (OFLC) provides with

#### IV. ANALYSIS

Upon our review of the entire record of proceeding, we find no basis for overturning the Director's decision. Rather, the evidence of record indicates that the Director was correct in denying the petition on the basis specified in her decision. The Petitioner did not provide a copy of a TLC certified for the extension period sought in the petition, and, therefore, did not comply with a material requirement for approval of an H-2B petition. We further find that the Petitioner provides no information or documentary evidence indicating that, as required by regulation, before filing the extension petition, it had obtained a TLC certified for the extension period sought. Further still, because the totality of facts presented in the record of proceeding does not establish that the Petitioner ever secured from DOL a certified TLC for the extension period, we see no reason for USCIS to contact DOL. The appeal will be dismissed.

#### V. CONCLUSION AND ORDER

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.

Cite as *Matter of O-&S-, Inc.*, ID# 14979 (AAO Dec. 23, 2015)

---

regard to TLCs certified for the Petitioner for the extension period in question, *available at* <http://www.foreignlaborcert.doleta.gov/performancecdm>. We found no entries for a TLC for the extension petition.