



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

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

In Re: 10092072

Date: JULY 17, 2020

Appeal of Vermont Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

The Petitioner, an information technology solutions provider, seeks to temporarily employ the Beneficiary 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 denied the petition, concluding that the Petitioner did not establish an employer-employee relationship with the Beneficiary. While this appeal was pending, the U.S. District Court for the District of Columbia issued a decision in *Itserve Alliance, Inc. v. Cissna*, --- F.Supp.3d ---, 2020 WL 1150186 (D.D.C. 2020). Subsequently, U.S. Citizenship and Immigration Services (USCIS) rescinded previously issued policy guidance and directed its officers to apply the existing regulatory definition at 8 C.F.R. § 214.2(h)(4)(ii) to assess whether a petitioner and a beneficiary have an employer-employee relationship. USCIS Policy Memorandum PM-602-0114, *Rescission of Policy Memoranda* at 2 (June 17, 2020), <http://www.uscis.gov/legal-resources/policy-memoranda>.

Because the Director's decision did not include a discussion of the substantive nature of the proffered position, the Director may wish to consider whether the Petitioner has met its burden in establishing that the "software engineer" position is a specialty occupation.<sup>1</sup> We observe several discrepancies and inconsistencies within the record, in addition to duty descriptions that do not support a finding that the proffered position requires a bachelor's degree or higher in a specific specialty.

Because this case is affected by the new policy guidance, we find it appropriate to remand the matter for the Director to consider the question anew and to adjudicate in the first instance any additional issues as may be necessary and appropriate. Accordingly, the following order shall be issued.

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<sup>1</sup> The Petitioner designated the proffered position under the SOC code and title 15-1132, "Software Developers, Applications." For more information, visit the Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, <https://www.bls.gov/OOH/computer-and-information-technology/software-developers.htm#tab-2> and Dep't of Labor's O\*NET summary report at <https://www.onetonline.org/link/summary/15-1132.00> (last visited Jul. 16, 2020).

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis and entry of a new decision.