In Re: 10375505

Date: SEPT. 28, 2020

Appeal of Vermont Service Center Decision

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

The Petitioner, an information technology company, 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. The Director also concluded that the record did not establish there would be sufficient specialty occupation work available for 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*, 443 F. Supp. 3d 14 (D.D.C. 2020). Subsequently, U.S. Citizenship and Immigration Services (USCIS) rescinded previously issued policy guidance. USCIS Policy Memorandum PM-602-0114, *Rescission of Policy Memoranda* at 2 (June 17, 2020), http://www.uscis.gov/legal-resources/policy-memoranda.

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.

ORDER: The decision of the Director is withdrawn.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.