U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8959473

Date: JUNE 17, 2020

Appeal of California Service Center Decision

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

The Petitioner, an information technology services company, seeks to temporarily employ the Beneficiary as a "database administrator" under the H-1B nonimmigrant classification for specialty occupations.[1]

The Director of the California Service Center denied the petition, concluding that the record did not establish (1) that the Petitioner would maintain an employer-employee relationship with Beneficiary and (2) that the Beneficiary would perform services in a specialty occupation. On appeal, the Petitioner asserts that the Director erred in denying the petition.

Upon *de novo* review, we will withdraw the decision of the Director.[2] The matter will be remanded for further review and entry of a new decision.

I. ANALYSIS

The Petitioner, which is located in Texas, seeks to outsource the Beneficiary's services to an end-client pursuant to a series of contractual relationships between the Petitioner and [redacted] (vendor), and between the vendor and [redacted] (end-client). The contractual path of succession between the actors in this case is as follows: Petitioner → Vendor → End-Client.

Upon review of the record in its totality and for the reasons set out below, we conclude that the record contains inconsistent information concerning where the Beneficiary will work and what educational qualifications are required to perform the duties of the proffered position. The Petitioner has not demonstrated that the labor condition application (LCA) corresponds to and supports the H-1B petition as required.[3]

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[1] *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

[2] We follow the preponderance of the evidence standard as specified in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

[3] While the Department of Labor certifies the LCA, U.S. Citizenship and Immigration Services (USCIS) determines whether the LCA's content corresponds with the H-1B petition. *See* 20 C.F.R. § 655.705(b) ("DHS determines whether the petition is supported by an LCA which corresponds with the petition,….").

On page five, Part 5, item 5 of the Form I-129 petition, as well as on page twenty-one, Section 4, item 1 of the H Supplement to Form I-129, the Petitioner indicated that the Beneficiary will not work offsite. Further, Part F, section a, item 2 on page three of the LCA also states that the Beneficiary will not work at a secondary entity's site. The address provided on the LCA as the place of employment where the Beneficiary will work is a location in [redacted] Michigan. These attestations appear to be irreconcilable with other evidence contained within the record including the following statements and documents:

- A work order ("Exhibit A"), which the Petitioner submitted as evidence of the project upon which the Beneficiary will work, states that the work location is [redacted] Ohio.
- In its response to the Director's request for evidence (RFE), the Petitioner stated that "the work is not being conducted at a third party location" and that the Beneficiary will work from "home and home only."
- A couple of pages later in the same RFE response, the Petitioner states that the Beneficiary "will perform services at the end-client worksite."
- Later in the same RFE response, the Petitioner specifically states, "the Beneficiary will work at an off-site location in [redacted] OH."
- A vendor letter dated March 11, 2019 states that the Beneficiary will work at a [redacted] Michigan address.
- In is appeal brief, the Petitioner states that the Beneficiary will work at the client site and that the Beneficiary will provide "services off-site."

In its itinerary of services submitted on appeal, the Petitioner indicates the [redacted] Michigan address is the "home" address. The Petitioner has not clarified whether [redacted] and [redacted] refer to the same city. Furthermore, we cannot ascertain whether this address is the Beneficiary's personal home, the home or mailing address of the Petitioner, or the home or mailing address of the end-client. The Petitioner also provides an Ohio address for the end-client, a New Jersey address for the vendor, and a Texas address for itself.

To summarize, the Petitioner has claimed that the Beneficiary will *not* work offsite, *will* work offsite, will work from home, will work in Michigan, and will work in Ohio. As such, it is entirely unclear where the Beneficiary will work. The petition is therefore remanded to the Director for a determination on whether the record sufficiently establishes the LCA corresponds to and supports the petition.[4]

In addition to the above, the Petitioner articulated different minimum qualifications for the proffered position. Initially, the Petitioner stated that it requires a bachelor's degree in computer science or a closely related field. However, it provided a vendor letter stating that the position requirements are a "bachelor's degree in computer science, computer information systems, information technology, or a relevant and related engineering field." In its RFE response, the Petitioner provided a chart of job duties with education requirements and stated that the duties require a bachelor's degree or higher in computer science or computer engineering and that specific academic courses were required.[5] As such, the Petitioner appears

[4] A petitioner submits the LCA to U.S. Department of Labor to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the area of employment or the actual wage paid by the employer to other employees with similar duties, experience, and qualifications. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

[5] The courses the Petitioner requires are computer programming and data structure, advanced computer architecture,

to provide several iterations of its requirements, but has not clearly indicated whether they all apply. Additionally, the Petitioner has not stated whether a bachelor's degree in the qualifying field(s) would satisfy the Petitioner's requirements if the degree program did not include the delineated courses.

Finally, the record does not contain the end-client's articulation of its own educational requirements for the position. The vendor letters in the record appear to articulate the requirements of the end-client on its behalf. Given the record contains numerous statements from the vendor professing not to be the Beneficiary's employer, nor is the vendor the entity for which the Beneficiary will provide services, it is not apparent why the vendor's claims hold any evidentiary value concerning the end-client's requirements. As recognized by the court in *Defensor v. Meissner*, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical.[6] The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services.[7] Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

If the Director concludes that the LCA corresponds to and supports the H-1B petition with regard to the Beneficiary's work location such that the petition may move forward, the Director may also wish to determine whether the Petitioner has sufficiently articulated its educational requirements for the position. Accordingly, the Director's determination concerning the educational qualifications for this position would be dispositive of whether the Petitioner has adequately established the proffered position as a specialty occupation.

II. CONCLUSION

Accordingly, the matter will be remanded to the Director to consider the LCA and the educational requirements issues and enter a new decision. The Director may request any additional evidence considered pertinent to the new determination and any other issue.

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

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advanced computer networking, computer organization and database security. The Petitioner also requires practical knowledge of various tools and technologies. The Petitioner does not state how it determines whether these course and knowledge requirements have been met.

[6] *Defensor v. Meissner*, 201 F.3d 384, 87-88 (5th Cir 2000)

[7] *Id.*