



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

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

In Re: 8772835

Date: JULY 24, 2020

Appeal of California Service Center Decision

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

The Petitioner, a staffing firm, seeks to employ the Beneficiary temporarily under the H-1B nonimmigrant classification for specialty occupations.¹ 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 California Service Center Director denied the Form I-129, Petition for a Nonimmigrant Worker, concluding in part that the Petitioner did not establish an employer-employee relationship with the Beneficiary. The Director also concluded that based on a lack of corroborating material, to include contracts, that the Beneficiary would perform services in a specialty occupation for the requested period of intended employment. 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 Subsequently, U.S. Citizenship and Immigration Services (USCIS) rescinded previously issued policy guidance relating to H-1B petitions filed for workers who will be employed at one or more third-party worksites, and directed its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.² The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.³ We review the questions in this matter *de novo*.⁴ While we conduct *de novo* review on appeal, we conclude that a remand is warranted in this case in part based on the new USCIS policy guidance. The Director should issue a new decision without relying on the guidance contained within the rescinded memoranda.

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 USCIS Policy Memorandum PM-602-0114, *Rescission of Policy Memoranda 2* (June 17, 2020), <http://www.uscis.gov/legal-resources/policy-memoranda>.

³ Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

⁴ See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

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.