U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8909383

Date: JULY 22, 2020

Appeal of Vermont Service Center Decision

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

The Petitioner, an information technology consulting firm, seeks to employ the Beneficiary temporarily as a "business systems analyst" 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 Director of the Vermont Service Center denied the petition, concluding in part 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 Subsequently, U.S. Citizenship and Immigration Services (USCIS) rescinded previously issued policy guidance and directed its officers to apply the existing regulatory definition at 8 C.F.R. § 214.2(h)(4)(ii) to assess whether a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.[2] The Director also concluded that based on a lack of corroborating material, to include contracts, the Petitioner had not demonstrated it would have qualifying work available for the Beneficiary. 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.

Within her new decision, the Director may wish to further address the following issues. Within the initial filing, the Petitioner indicated that it would accept a business administration degree as a qualifying prerequisite for the proffered position. Although a general-purpose bachelor's degree, such as a degree in business, may be a legitimate prerequisite for a particular position, requiring such a

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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] USCIS Policy Memorandum PM-602-0114, *Rescission of Policy Memoranda* at 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).

degree, without more, might not justify a conclusion that a particular position qualifies for classification as a specialty occupation.[5]

Additionally, pertaining to the Beneficiary's qualifications, the Petitioner offered an evaluation from a professor from [redacted] University. Despite the claims to the contrary within the assistant registrar's letter, the credits earned through this university's prior learning credit program may only be used to fill electives. The material the Petitioner provided from the university's website states: "They may not be used to fill general education or major course requirements." As a result, the Director should consider whether the Petitioner has demonstrated this material satisfies the regulatory requirements at 8 C.F.R. § 214.2(h)(4)(C)(*4*) and (D)(*1*) as it relates to the professor's "authority to grant college-level credit for training and/or experience *in the specialty*" (emphasis added).

Finally, the Director should consider whether the Petitioner has shown that the proffered position can exist at the client worksite location specified on the labor condition application and whether the end-client is permitted to operate a workspace for its employees out of that home occupation.

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.

[5] *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).