



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

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

In Re: 8830020

Date: JULY 23, 2020

Appeal of California Service Center Decision

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

The Petitioner, a staffing agency, 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 California Service Center denied the petition, concluding that the Petitioner did not establish (1) an employer-employee relationship with the Beneficiary; and (2) that the proffered position qualifies as a specialty occupation. 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 Subsequently, U.S. Citizenship and Immigration Services (USCIS) rescinded previously issued policy guidance and directed its officers to apply the existing regulatory definition at 8 C.F.R. § 214.2(h)(4)(ii) to assess whether a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 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.¹ 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ORDER: The decision of the Director is withdrawn.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.

¹ We observe that the statement of work states that the Beneficiary's services will be need until November 2020, which approximately a year after the requested H-1B start date.