U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8795327

Date: JUNE 10, 2020

Appeal of Vermont Service Center Decision

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

The Petitioner, an international travel services company, seeks to temporarily employ the Beneficiary as a "market research analyst" 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 evidence of record does not establish that the proffered position qualifies as a specialty occupation. On appeal, the Petitioner submits a brief and asserts that the Director erred.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.[1] The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*.[2]

The Petitioner submits additional evidence on appeal including an updated support letter, an updated expert opinion letter, and the Beneficiary's work samples. The Petitioner asserts that the evidence submitted demonstrates that the proffered position qualifies as a specialty occupation. However, because the Director has not yet addressed this new evidence, and it appears material to the Petitioner's claim, we shall return the matter for the Director so that she may consider it.

The Director may also wish to consider whether certain inconsistencies we have observed regarding the Petitioner's stated requirements for the position impact upon its overall eligibility claims. For example, the Petitioner initially made no mention of a requirement for proficiency in a foreign language. However, the Petitioner expanded the Beneficiary's duties in the RFE response by stating the Beneficiary will "make sure" English language information matches the Chinese language interpretation in "the system." It also provided a job posting stating that a successful candidate must be a "[f]luent English and Mandarin speaker and writer." The Petitioner makes similar assertions on appeal. For example, it submits a letter from [redacted] who stressed the importance of

[1] Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).
[2] *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

"being bilingual." The Petitioner must establish that the position offered to the Beneficiary when the petition was filed merits classification for the benefit sought. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). The Director may wish to consider the implications of these inconsistencies as she considers: (1) the specialty-occupation issue in light of the Petitioner's new evidence; and (2) whether the labor condition application (LCA) corresponds with and supports the H-1B petition, as required.[3]

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

[3] With specific regard to the LCA, the Director may wish to consider whether the Petitioner's apparent Mandarin language fluency requirement was accurately reflected in its wage-level designation. *See generally* 8 C.F.R. § 214.2(h); U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.