U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10646740

Date: SEPT. 4, 2020

Appeal of California Service Center Decision

Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker

The Petitioner, a company engaged in temporary help services, seeks to temporarily employ the Beneficiaries as "maid and housekeeping" under the CNMI-Only Transitional Worker (CW-1) nonimmigrant classification. See 48 U.S.C. § 1806(d). The CW-1 visa classification allows employers in the Commonwealth of the Northern Mariana Islands (CNMI) to apply for permission to temporarily employ foreign workers who are otherwise ineligible to work under other nonimmigrant worker categories.

The Director of the California Service Center denied the petition, concluding that the Petitioner did not properly file Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, for multiple beneficiaries. Specifically, the Director noted that the Petitioner could not include multiple beneficiaries in the same petition because the Beneficiaries will not be employed in the same location. See 8 C.F.R § 214(w)(9).

On appeal, the Petitioner submits a brief with additional evidence and asserts that the Director erred in denying the petition. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. See Matter of Christo's Inc., 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will sustain the appeal.

Based upon our review of the entire record of proceedings, including the submissions on appeal addressing the grounds for the Director's decision, we conclude that the Petitioner has overcome the basis of the Director's denial. The Petitioner has provided sufficient evidence regarding the work location of the Beneficiaries to establish that they will be working in the same location.

The Petitioner noted that the area of employment will be the Petitioner's business location, and four private residences all located in [redacted]. In addition, the ETA-9142C, CW-1 Application for Temporary Employment Certification, was certified for the Petitioner's business location and [redacted]. The instructions for filing the temporary employment certification indicate that the employer must define the area of intended employment. The U.S. Department of Labor regulations at 20 C.F.R. § 656.3 define the area of intended employment as the "area within normal commuting distance of the place (address) of intended employment. There is no rigid measure of distance which

constitutes a normal commuting distance or normal commuting area, because there may be widely varying factual circumstances among different areas (e.g., normal commuting distances might be 20, 30, or 50 miles)." The Petitioner provided sufficient evidence to establish the Beneficiaries will all be in a normal commuting area which falls under the definition of area of intended employment.[1] Therefore, the Beneficiaries will be working in the same location.

ORDER: The appeal is sustained.

[1] Under the preponderance of the evidence standard, the evidence must demonstrate that the petitioner's claim is "probably true." Matter of Chawathe, 25 I&N Dec. at 376. We examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

If a petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is "more likely than not" or "probably" true, it has satisfied the standard of proof. Stated another way, a petitioner must establish that there is greater than a fifty percent chance that a claim is true.