U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8889934

Date: JUNE 30, 2020

Appeal of Vermont Service Center Decision

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

The Petitioner, a consulting and business development firm, seeks to employ the Beneficiary temporarily as a "software developer" 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 Vermont Service Center Director denied the petition, concluding 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 Subsequently, U.S. Citizenship and Immigration Services (USCIS) rescinded previously issued policy guidance and directed its officers to apply the existing regulatory definition at 8 C.F.R. § 214.2(h)(4)(ii) to assess whether a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. USCIS Policy Memorandum PM-602-0114, *Rescission of Policy Memoranda* at 2 (June 17, 2020), http://www.uscis.gov/legal-resources/policy-memoranda.

We note the following topics that the Director may wish to address. Within the initial filing, the Petitioner indicated the duties required a bachelor's degree in a computer background or any other related field. It is unclear how a degree in any computer-related discipline would sufficiently correlate with the proffered position's duties and responsibilities. For instance, how a bachelor's degree in graphics design, cartography, video game design, or computer networking would sufficiently relate to this position's duties.

Additionally, there are several entities involved with the Beneficiary's placement at the ultimate end-client [redacted]. The contractual chain the Petitioner and other relevant parties represented before the Director was: the Petitioner → [redacted] → [redacted] → end-client. However, a different situation emerged within the appeal. Now, the parties claim the contractual chain includes and additional party, [redacted]: the Petitioner→ [redacted] → [redacted] → [redacted] → end-client. The Petitioner should explain why it initially presented a Sub-contracting Agreement executed in June 2014

[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).

between [redacted] and [redacted] if these two parties never actually entered into a contract as it relates to this petition and this Beneficiary. The Director should determine whether this changed situation adversely impacts the petition or the amount of weight the Director should ascribe to the Petitioner's claims.

Additionally, we question why [redacted] submitted a March 2019 and a November 14, 2019, letter in which it discussed all the parties within the contractual chain, but failed to mention [redacted]. But [redacted] also provided a November 21, 2019, letter in which it discussed [redacted] within the contractual chain. It further appears that within [redacted] November 21, 2019, letter, it claims that the almost completely redacted Sub-contracting Agreement dated June 18, 2014 between [redacted] and [redacted] is actually "a redacted agreement between [redacted] and [redacted] and [redacted]." However, we note that contract does not mention [redacted] and the only signing parties were [redacted] and [redacted].

Finally, the Director may wish for the Petitioner to explain why the end-client indicated within its February 2019 letter that the Beneficiary was an employee of [redacted] only to omit that information within their July 2019 letter without any explanation. We further note in the July 2019 end-client letter that they do not mention the Petitioner as the Beneficiary's employer. The Director should determine whether these combined evidentiary anomalies have a significant adverse impact on the viability of the Petitioner's claims.

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.