U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10021846

Date: JULY 24, 2020

Appeal of California Service Center Decision

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

The Petitioner, a software development and consulting company, seeks to temporarily employ the Beneficiary as a "Java Api developer" 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 evidence of record does not establish that (1) the Petitioner will have an employer-employee relationship with the Beneficiary, and (2) the proffered position qualifies as a specialty occupation. The Petitioner submits additional evidence on appeal including a new letter from the end-client and an opinion letter.[1] The Petitioner asserts that the evidence submitted demonstrates that the proffered position qualifies as a specialty occupation and that it will have 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 Subsequently, U.S. Citizenship and Immigration Services (USCIS) rescinded previously issued policy guidance and directed its officers to apply the existing regulatory definition at 8 C.F.R. § 214.2(h)(4)(ii) to assess whether a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.

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.[2] Accordingly, the following order shall be issued.

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[1] The Petitioner asserts that it also submitted an updated Prime Vendor letter as Exhibit B; however, the record does not contain the referenced updated letter from the Prime Vendor.

[2] We also note, in her decision, the Director erroneously mentions companies that do not pertain to this petition. When denying a petition, the decision must be based on correct recitation of the facts and documents and the Director must fully

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.

explain the reasons in order to allow the Petitioner a fair opportunity to contest the decision and provide the AAO an opportunity for meaningful appellate review. *Cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal).