U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28153692

Date: SEPT. 21, 2023

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (CNMI)

The Petitioner seeks to temporary employ the Beneficiary as a building facilities maintenance technician 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 record did not establish that the Beneficiary was lawfully present in the CNMI at the time the petition was filed as required by 8 C.F.R. § 214.2(w)(1)(vi). On appeal, the Petitioner submits a brief and additional evidence.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

To be eligible for classification as a CW-1 nonimmigrant, a beneficiary "present in the CNMI" must be "lawfully present in the CNMI." *See* 8 C.F.R. § 214.2(w)(2)(iv). The regulation at 8 C.F.R. § 214.2(w)(1)(vi) defines "lawfully present in the CNMI" as meaning that the beneficiary:

> Was lawfully admitted or paroled into the CNMI under the immigration laws on or after the transition program effective date, other than an alien admitted or paroled as a visitor for business or pleasure (B-1 or B-2, under any visa-free travel provision or parole of certain visitors from Russia and the People's Republic of China), and remains in a lawful immigration status.

Further, under 8 C.F.R. § 214.2(w)(7)(v), a petition for new employment must be filed within the 30-day period immediately following the date on which the Beneficiary's employment terminated.

In her decision, the Director noted that the current petition was filed with a start date of October 1, 2022; however, the pay stubs in the record only show that the Beneficiary worked with his previous employer until August 21, 2022. The Director therefore concluded that it appears that more than 30 days passed between the time the Beneficiary last worked for the previous employer and the requested start date on the petition.

On appeal, the Petitioner submits a copy of a pay stub from his previous employer covering the pay period from August 29, 2022 to September 4, 2022. We conclude a remand is warranted because the Petitioner's explanation and evidence are directly material to the benefit sought.

Accordingly, the matter will be remanded to the Director to conduct a first-line adjudication of this new evidence. The Director may request any additional evidence considered pertinent to the new determination and any other issues. We express no opinion regarding the ultimate disposition of this case on remand.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.