U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7952932

Date: FEB. 23, 2022

Appeal of Vermont Service Center Decision

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

The Petitioner, an investment advisory company, seeks to temporarily employ the Beneficiary as an "Associate" 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 H-1B petition concluding, in part, that the Petitioner did not establish it would have qualifying work available for the Beneficiary for the entire period of requested employment. The matter is now before us on appeal. While this appeal was pending, the U.S. District Court for the District of Columbia issued a decision in *ItServe All., Inc. v. Cissna*, 443 F. Supp. 3d 14 (D.D.C. 2020), *appeal dismissed sub nom. ITServe All., Inc. v. Cuccinelli*, No. 20-5132, 2020 WL 3406588 (D.C. Cir. June 15, 2020). Subsequently, U.S. Citizenship and Immigration Services (USCIS) rescinded previously issued policy guidance relating to H-1B petitions filed for workers who will be employed at one or more third-party worksites and directed its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* 2 (June 17, 2020), http://www.uscis.gov/legal-resources/policy-memoranda.

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). While we conduct *de novo* review on appeal, we conclude that a remand is warranted in this case in part based on the new USCIS policy guidance. Additionally, the passage of time necessitates a remand of the record to allow an opportunity to update the record and, in particular, for the Petitioner to submit any further evidence in support of the petition.

Because this case may be affected by the new policy guidance, we will remand the matter so that the Director may conduct a first-time adjudication and determine the impact of that guidance.

ORDER: The decision of the Director is withdrawn.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