U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21482016

Date: JUL. 28, 2022

Appeal of Vermont Service Center Decision

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

The Petitioner seeks to temporarily employ the Beneficiary as a "data analyst" 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 petition, concluding that the record did not establish that the position is a specialty occupation. On appeal, the Petitioner submits new evidence and contends that the petition should be approved.

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 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 withdraw the Director's decision and remand the matter for entry of a new decision.

We conclude that a remand is warranted in this case because the new evidence the Petitioner submits on appeal appears material to its claim that the proffered position is a specialty occupation. Since this new evidence was not before the Director when she made her determination that the position is not a specialty occupation, we will remand the matter so that the Director may consider it in the first instance. Specifically, the Director may wish to consider whether the new evidence, and in particular the expert opinion, together with the other evidence submitted establishes, by a preponderance of the evidence, that the position qualifies as a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation).

As the Director conducts her review, she may also wish to examine the Petitioner's offer of employment letter, which appears to function as a contractual agreement between the Petitioner and the Beneficiary, delineating the terms of the Beneficiary's employment. Specifically, she may wish to consider whether paragraph 10 of that letter improperly places responsibility on the Beneficiary for payment of the Petitioner's H-1B fees.

Accordingly, the matter will be remanded to the Director to consider the new evidence and enter a new decision. The Director may request any additional evidence considered pertinent to the new determination and any other issue. We express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The decision of the Director is withdrawn.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