



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 25604450

Date: JAN. 24, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks to employ the Beneficiary 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 Nebraska Service Center Director denied the Form I-129, Petition for a Nonimmigrant Worker (petition), concluding that the Petitioner did not establish the U.S. Department of Labor (DOL) ETA Form 9035 & 9035E, Labor Condition Application for Nonimmigrant Workers (LCA) supported the petition because the organization did not select the highest paying occupation when the position was comprised of a combination of occupations. The matter is now before us on appeal. 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. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we conclude that a remand is warranted in this case.

The Petitioner filed the LCA in this case and designated the position to fall under the Manufacturing Engineers occupation and the 17-2112.03 standard occupational classificational (SOC) code. The Director issued correspondence notifying the Petitioner that correct classification for the position appeared to instead be under a higher paying occupational code, Architectural and Engineering Managers, 11-9041. After the Petitioner's responded to the notice, the Director denied the petition because the organization did not provide an LCA that was certified for the specialty occupation in which the Beneficiary would be employed. We note that the Director did not provide any analysis to address the Petitioner's arguments.

Consequently, the record does not reflect that the Director provided the Petitioner with a meaningful opportunity to address or rebut their reasoning that led to an adverse decision. *See* 8 C.F.R. § 103.3(a)(1)(i) (requiring in writing specific reasons for denial of an application or petition); *Matter of Saelee*, 22 I&N Dec. 1258, 1262, 1286 (BIA 2000) (citing *Matter of M-P-*, 20 I&N Dec. 786, 787-88 (BIA 1994) (finding that a decision must fully explain the reasons for denying a filing to allow

the respondent a meaningful opportunity to challenge the determination on appeal). Accordingly, we will remand this matter to address this matter.

Within that decision, the Director should be mindful to evaluate each of the position's duties, to include the percentage of time that the beneficiary would spend performing each job duty, and to compare and contrast those with the tasks, knowledge, and work activities generally associated with an Occupational Information Network SOC occupation to ensure the most relevant occupational code has been selected. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009) (DOL guidance), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

Accordingly, we will remand the matter to the Director to consider the LCA issue again and to enter a new decision. The Director may request any additional evidence considered pertinent to the new determination and any other issue. As such, 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.