U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27952012

Date: SEPT. 18, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks to temporarily 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 Director of the Texas Service Center denied the petition, concluding the record did not establish that the Petitioner's work location was a legitimate place of employment. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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.

We conclude the Director did not offer an adequate analysis of the evidence submitted so that the Petitioner could be afforded a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i) *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). We are not unsympathetic to the concerns raised by the Director in their decision. But the Director is required to follow long-standing legal standards and determine, first, whether the proffered position qualifies for the classification as a specialty occupation, and second, whether the Beneficiary was qualified for the position at the time the non the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].").

When they conduct their analysis of the evidence submitted, the Director is not limited to merely examining the job title or broad occupational category alone to determine whether a particular job is

a specialty occupation under the regulations and statute. The Director can examine the evidence and documentation of the petitioner's business operations along with the specific duties of the proffered job. The Director may evaluate the employment of the individual in this context to determine whether the position qualifies as a specialty occupation. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

Accordingly, we will withdraw the Director's decision and remand the matter for the Director to further review the record and issue a decision based on the complete record. We express no opinion as to the ultimate disposition of this matter.

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