



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

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

MATTER OF [REDACTED]

DATE: FEB. 7, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, an accounting, auditing, and tax consulting company, seeks to temporarily employ the Beneficiary as an "audit assistant" 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 concluded that the evidence in the record did not establish that: (1) the Petitioner complied with the itinerary requirement under 8 C.F.R. § 214.2(h)(2)(i)(B); (2) the Petitioner would maintain the requisite employer-employee relationship with the Beneficiary; or (3) the proffered position qualifies as a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that it has satisfied all evidentiary requirements.

Upon review, we will withdraw the Director's decision and remand the petition for entry of a new decision.

I. PROFFERED POSITION

The Petitioner stated that its business model is to form teams of qualified professionals who will work together, both onsite at its offices and, if applicable under the terms of a specific client engagement, at client sites in order to provide advisory services. The Petitioner is not a staffing company or job placement agency; rather, it is one of the nation's leading professional services firms with revenues in excess of \$16.1 billion for the most recent fiscal year. The Petitioner indicates that the Beneficiary will work onsite at its offices in [REDACTED] California as well as at the offices of its client, [REDACTED] located in [REDACTED] California. The labor condition application (LCA) indicates that the Beneficiary would work in [REDACTED] California, but lists no other place of employment.

II. THE DIRECTOR'S GROUNDS FOR DENIAL

Based upon our review of the entire record of proceedings, including the submissions on appeal addressing the grounds for the Director's decision, we find that the Petitioner has overcome the bases of the Director's denial. Specifically, the totality of evidence now establishes that the Petitioner will have the requisite employer-employee relationship with the Beneficiary and the proffered position qualifies as a specialty occupation. Further, the evidence of record also establishes that the Petitioner has satisfied the itinerary requirement. As such, we will withdraw the Director's decision with respect to these issues.

III. LABOR CONDITION APPLICATION

However, although not addressed in the Director's decision, the Petitioner has not submitted a valid LCA that corresponds to all of the proposed work locations. Accordingly, we will instruct the Director to review this issue on remand and request any additional evidence deemed necessary.

U.S. Department of Labor (DOL) regulations state that "[e]ach LCA *shall state . . . [t]he places of intended employment.*" 20 C.F.R. § 655.730(c)(4) (emphasis added). "Place of employment" is defined as "the worksite or physical location where the work actually is performed by the H-1B . . . nonimmigrant." 20 C.F.R. § 655.715. Moreover, the instructions require that the employer list the place of intended employment "with as much geographic specificity as possible" and notes that the employer may identify up to three physical locations, including street address, city, county, state, and zip code, where work will be performed. Petitioners who know that an employee will be working at additional worksites at the time of filing must include all worksites on ETA Form 9035. Failure to do this will result in a finding that the employer did not file an LCA that supports the H-1B petition.

In this case, the Form I-129 and LCA list the work location as [REDACTED] CA [REDACTED]. In addition, section G of the LCA states that the Beneficiary's only intended work site is the aforementioned Petitioner location in [REDACTED] California. However, the Petitioner submitted evidence indicating that a portion of the Beneficiary's duties will be performed at its client's office in [REDACTED] California, which is not in the same metropolitan statistical area as [REDACTED]. Therefore, the Petitioner has not submitted a valid LCA that corresponds to all of the proposed work locations.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. The regulations state, in pertinent part:

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation*

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named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

20 C.F.R. § 655.705(b) (emphasis added).

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the Beneficiary. Here, the Petitioner has not submitted a valid LCA that corresponds to all of the proposed work locations.

Therefore, we will remand this matter to the Director for a new decision, as the Director did not discuss whether the Petitioner submitted a valid LCA corresponding with the petition. The Director should request any additional evidence deemed warranted to address the deficiencies noted with respect to this issue. As always in these proceedings, the burden of proof rests solely with the Petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

IV. CONCLUSION

Based on the foregoing discussion, although the Director's decision will be withdrawn, the evidence of record as presently constituted does not establish eligibility for the benefit sought. Accordingly, we will remand this matter to the Director for further action and entry of a new decision.

ORDER: The decision of the Director, California Service Center, is withdrawn. The petition is remanded to the Director, California Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of* [REDACTED] ID# 198586 (AAO Feb. 7, 2017)