



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

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

In Re: 30374622

Date: MAR. 08, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks to temporarily employ the Beneficiary as a research specialist under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act)

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary is qualified for the proffered position. On appeal, the Petitioner asserts that the Director erred in the decision. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

While we conduct de novo review on appeal, we conclude that a remand is warranted in this case because the Director's decision is insufficient for review. Specifically, the Director is required to follow long-standing legal standards and determine first, whether the proffered position qualifies for classification as a specialty occupation, and second, whether the Beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *See 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].")

Accordingly, the matter will be remanded to the Director to consider the specialty occupation issue and 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**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.