



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

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

In Re: 28786695

Date: OCT. 26, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks to amend and extend a petition 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 Director of the Texas Service Center denied the petition. 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. The Petitioner submitted sufficient information with this appeal to establish that the Beneficiary is not a U.S. lawful permanent resident.<sup>1</sup> So we remand this matter to the Director to adjudicate the instant petition on the merits. The Director may request any additional evidence considered pertinent to the new determination and any other applicable relevant issue. We express no opinion regarding the ultimate resolution of this matter 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**ORDER:** The Director's decision is withdrawn.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.

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<sup>1</sup> A review of USCIS records reflects the "A" number contained on the USCIS Form I-797, Notice of Action, Approval Notice for the USCIS Form I-140, Immigrant Petition for Alien Worker, approved for the Petitioner on behalf of the Beneficiary does not relate to the Beneficiary but to a different individual.