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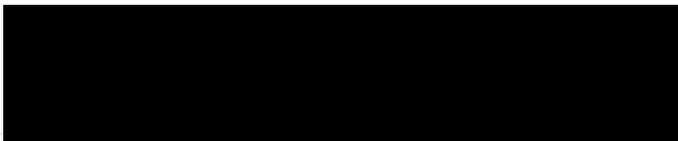


FILE: WAC 04 188 50318 Office: CALIFORNIA SERVICE CENTER Date: MAR 16 2015

IN RE: Petitioner: [Redacted]
Beneficiaries: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner engages in construction and equipment rental. It desires to extend its authorization to employ the beneficiaries as boilermakers for 13 months. The director determined that the petitioner had not submitted a temporary labor certification from the Governor of Guam (Form GDOL 750) or notice stating that such certification could not be made and denied the petition.

Counsel has now submitted Form GDOL 750 for review and consideration with the appeal.

The regulations stipulate that an H-2B petition for temporary employment on Guam shall be accompanied by a labor certification determination that is either: (1) a certification from the Governor of Guam stating that qualified workers in the United States are not available to perform the required services, and that the alien's employment will not adversely affect the wages and working conditions of United States resident workers who are similarly employed on Guam; or (2) a notice detailing the reasons why such certification cannot be made. 8 C.F.R. § 214.2(h)(6)(v)(A).

The Petition for a Nonimmigrant Worker (Form I-129) was filed on June 18, 2004 without a temporary labor certification, or notice detailing the reasons why such certification cannot be made. Absent such certification from the Governor of Guam or notice detailing the reasons why such certification cannot be made, the petition cannot be approved.

On appeal, the petitioner submits the final determination notice from the Governor of Guam dated August 6, 2004 and the original approved labor certification valid from August 6, 2004 through August 6, 2005. Although the petitioner applied for a temporary labor certification on June 2, 2004, prior to the filing of the petition, a determination was not rendered until August 6, 2004. Neither the statute nor regulations allow for the acceptance of a labor certification obtained subsequent to the filing of the petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The petition cannot be approved for another reason. The record does not contain evidence that the beneficiaries have two years of experience in the job offered as stipulated on Form ETA 750. 8 C.F.R. § 214.2(h)(6)(vi)(C).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

This decision is without prejudice to the filing of a new petition accompanied by the proper documentation and fee.

ORDER: The appeal is dismissed.