



U.S. Department of Justice

Immigration and Naturalization Service

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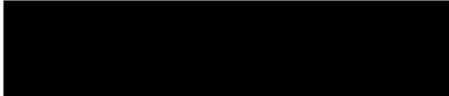


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11 DEC 2007

File: EAC 01 053 53800 Office: Vermont Service Center Date:

IN RE: Petitioner:
Beneficiary:



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)

IN BEHALF OF PETITIONER: Self-represented

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks to employ the beneficiaries as bricklayers for a period of six months. The director denied the petition because it was not accompanied by a temporary labor certification from the Department of Labor. The certifying officer declined to issue a labor certification because he determined that the beneficiaries' proffered wage is lower than the local union wage. The certifying officer stated:

The wage of \$22.65 per hour does not meet the wage of \$24.10 per hour which is the local union wage determined by the Connecticut Department of Labor in compliance with the Davis-Bacon Act.

On appeal, the petitioner argues that the beneficiaries' proffered wage is the same as the local union wage. The petitioner has provided evidence in support of its argument.

8 C.F.R. 214.2(h)(6)(iv)(A) requires that a petition for temporary employment in the United States be accompanied by a temporary labor certification from the Department of Labor, or notice detailing the reasons why such certification cannot be made. 8 C.F.R. 214.2(h)(6)(iv)(A) states that a petition not accompanied by temporary labor certification must be accompanied by countervailing evidence from the petitioner that addresses the reasons why the Secretary of Labor could not grant a labor certification.

The petitioner argued that the pay rate of \$22.65 did not include approximately \$11.06 per hour in benefits. The director determined that "the pay rate is completely separate from any benefits and cannot be added on."

On appeal, the petitioner has cited the Connecticut General Statute, section 31-35, which states:.

Prevailing Rate: The prevailing rate consists of a base rate and a fringe rate which may be paid in cash or benefits.

In addition, the petitioner has provided a letter from the bricklayers union which states that the wage rate at the time the labor certification application was filed was \$22.65 per hour plus benefits of \$11.06 per hour. In view of the foregoing, it is concluded that the grounds for denial have been overcome.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 361. The petitioner

has sustained that burden. Accordingly, the decision of the director will be withdrawn and the petition will be approved.

ORDER: The director's decision is withdrawn and the petition is approved.