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U.S. Department of Justice

Immigration and Naturalization Service

(Seal of the U.S. Department of Justice)
OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

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11 APR 2002

File: SRC 00 186 53756 Office: Texas Service Center

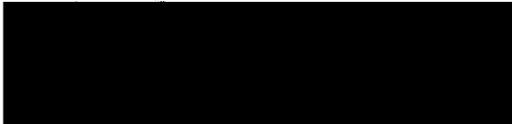
Date: 11 APR 2002

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:



Public Copy

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, Texas Service Center, who certified his decision to the Associate Commissioner for Examinations for review. The director's decision will be affirmed.

The petitioner seeks to employ the beneficiary as a supervisor of boat builders for a period of one year. The director denied the petition because it was not accompanied by a temporary labor certification from the Department of Labor or notice detailing the reasons why such certification cannot be made. The certifying officer of the Department of Labor (DOL) declined to issue a labor certification because he determined that the petitioner is not a United States employer and, as such, not authorized to file an H-2B petition. The certifying officer also explained that Intermarine USA, the United States firm, may file a new application for labor certification after it has advertised for United States workers and completed any other requirements necessary to obtain certification from the DOL.

The petitioner has not responded to the notice of certification.

Pursuant to 8 C.F.R. 214.2(h)(6)(iii)(B):

An H-2B petitioner shall be a United States employer, a United States agent, or a foreign employer filing through a United States agent A foreign employer may not directly petition for an H-2B nonimmigrant but must use the services of a United States agent to file a petition for an H-2B nonimmigrant.

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)(4)(E) requires that a petition not accompanied by a temporary labor certification must be accompanied by countervailing evidence that addresses the reasons why the Secretary of Labor could not grant a labor certification.

The petitioner submitted a letter explaining that ATN (Italy) is an Italian firm with a United States subsidiary, IMO America, Inc. Intermarine USA of Savannah has a contract with the Italian firm enabling ATN (Italy) to work in the shipyards of Intermarine USA to help with the construction of three luxury yachts.

The director found that Intermarine USA is the actual employer. Consequently, he determined that the petitioner had submitted insufficient countervailing evidence to show that it is a United States employer.

After a review of the evidence contained in the record, it is found

that the decision of the director is correct. 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 not sustained that burden. Accordingly, the decision of the director will be affirmed.

ORDER: The decision of the director is affirmed. The visa petition is denied.