



U.S. Citizenship  
and Immigration  
Services

D4

[REDACTED]

FILE: EAC 05 180 50618 Office: VERMONT SERVICE CENTER Date: JUN 1 2005

IN RE: Petitioner: [REDACTED]  
Beneficiary: [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)

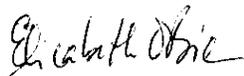
ON BEHALF OF PETITIONER:

[REDACTED]

**PUBLIC COPY**

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 approved by the Director, Vermont Service Center, and certified to the Administrative Appeals Office (AAO) for review as required by 8 C.F.R. § 214.2(h)(9)(iii)(B)(2)(ii). The decision of the director will be withdrawn and the case remanded for further action and consideration.

The petitioners are private citizens that seek to employ the beneficiary as a live-in child monitor for one year. The Department of Labor determined that a temporary certification by the Secretary of Labor could not be made because the employer had not established a temporary need.

On notice of certification, the petitioner did not submit any additional evidence. Therefore, the record is considered complete.

The petitioner indicates in his letter, dated August 23, 2004, that his need for the beneficiary's services is intermittent. The record is not clear as to why the petitioner indicated this basis when in the same letter he states that he seeks the temporary need of a live-in child monitor for approximately one year until September 30, 2005. The evidence indicates that the petitioner seeks the services of the beneficiary on a one-time occurrence basis. The AAO finds that the petitioner's need for the beneficiary's services is a one-time occurrence and temporary. However, the petition cannot be approved for another reason.

Upon review, the record as it is presently constituted does not contain evidence that the beneficiary has three months of experience in the job offered as stipulated on the Application for Alien Employment Certification (Form ETA 750). 8 C.F.R. § 214.2(h)(6)(vi)(C). The record also does not contain evidence of the beneficiary's other special requirements, such as the ability to swim, listed on Form ETA 750. Absent such evidence, this case cannot be approved.

Since the aforementioned issues were not discussed in the director's decision, the case will be remanded so that the director may properly address the issues and allow the petitioner time to submit additional evidence in support of the petition. The director may also request any additional evidence deemed warranted. As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action and consideration consistent with the above decision and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.