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FILE: LIN 05 059 51761 Office: NEBRASKA SERVICE CENTER Date: OCT 19 2005

IN RE: Petitioner:
Beneficiaries:



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: This is a motion to reconsider the Administrative Appeals Office's decision dismissing the appeal of the denial of the nonimmigrant visa petition. The motion to reconsider will be granted and the previous decisions of the Acting Director, Nebraska Service Center, and the Administrative Appeals Office (AAO) will be withdrawn. The petition will be denied.

The petitioning entity [REDACTED] is a subsidiary of [REDACTED] [REDACTED] a Canadian corporation. The petitioner maintains and manages the United States portion of the international liquid petroleum pipeline. It desires to employ the beneficiaries as emergency response workers for one year. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be made because the job is not open to United States workers and the petitioning company is not responsible for the wages (no employer-employee relationship). The acting director determined that sufficient countervailing evidence had been submitted to establish that qualified persons in the United States are not available, that the employment policies of the DOL had been observed and that the need for the services to be performed is temporary. The acting director approved the petition and certified her decision to the AAO for review, as required by 8 C.F.R. § 214.2(h)(9)(iii)(B)(2)(ii).

The AAO determined that the period of requested employment on the amended petition is from December 21, 2004 until April 30, 2006. With the amended petition, the petitioner submitted a new final determination notice from the Department of Labor (DOL) stating that such certification could not be made. The AAO found that the labor certification determination could not be considered because the final determination was not obtained until February 16, 2005, which is subsequent to the petition's filing date, December 20, 2004, and withdrew the acting director's decision to approve the petition.

On motion, counsel states that the AAO erred in finding the petitioner requested the employment until April 30, 2006. Counsel states that the petitioner only requested the services of nine named beneficiaries until April 30, 2005.

The petition indicates that the dates of the intended employment are "extend to April 30, 2006." In response to the acting director's Request for Evidence (RFE), the petitioner states "On March 16, 2005, the Nebraska Service Center (NSC) issued the enclosed RFE to which we are responding. . . . In response to the RFE, Terasen is requesting that the nine named beneficiaries be granted H-2B status with a validity date to expire on April 30, 2005." Therefore, counsel is correct in stating that the petitioner desired to amend the employment period to April 30, 2005. However, the petitioner's letter requesting to amend the employment time period is dated May 10, 2005. Therefore, the employment time period had already expired as of the date of the petitioner's letter. Moreover, the time period had already expired as of the date the petition was approved by the acting director on May 19, 2005.

The regulation at 8 C.F.R. § 214.2(h)(9)(ii)(B) states that, if a petition is approved after the date the petitioner indicates that the service will begin, the approved petition and approval notice should show a validity period commencing with the date of approval and ending with the date requested by the petitioner.

This case could have been approved for the nine beneficiaries on or before April 30, 2005. However, the petitioner's response to the director's RFE was subsequent to the date the petitioner intended to temporarily

employ the beneficiaries. To remand this case to the director for further action and consideration would have no practical effect because the period of requested employment has passed. Therefore, the petition is denied because the matter is moot due to the passage of time.

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

ORDER: The decisions of the acting director, dated May 19, 2005, and the AAO, dated July 12, 2005, are withdrawn. The petition is denied.