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**U.S. Citizenship
and Immigration
Services**

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FILE: SRC 06 143 50691 Office: TEXAS SERVICE CENTER Date: **JUN 29 2006**

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:

SELF-REPRESENTED

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, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter remanded for further action and consideration.

The petitioner engages in the business of ice cream distribution. It desires to employ the beneficiaries as ice cream truck drivers pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(ii)(b) for seven months. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could be made. The director determined that the petitioner had not established that any of the beneficiaries holds a valid driver's license for the State of Tennessee as of the petition's filing date. Absent a valid Tennessee driver's license, the director concluded that the beneficiaries are unable to perform the duties of the proffered position and denied the petition.

On appeal, the petitioner states that it is illogical to require a Tennessee driver's license of men that have never entered the United States.

Upon careful review of the entire record of proceeding, the AAO finds that the evidence of record does not support the director's decision to deny the petition. The record of proceeding does not contain evidence that a non-resident requires a Tennessee driver's license in order to perform the duties of the proffered position, specifically, driving an ice cream truck. The case will be remanded.

Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(ii)(b), defines an H-2B temporary worker as:

an alien having a residence in a foreign country which he has no intention of abandoning, who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country
....

The regulation at 8 C.F.R. 214.2(h)(6)(vi)(C) states:

Alien's qualifications. Documentation that the alien qualifies for the job offer as specified in the application for labor certification, except in petitions where the labor certification application requires no education, training, experience, or special requirements of the beneficiary.

The Application for Alien Employment Certification (Form ETA 750) at Part A indicates that the minimum amount of education required to perform satisfactorily the job duties is seven years of high school education. The petitioner does not require any other qualifications to perform the duties of the proffered position.

In its request for evidence (RFE), dated April 11, 2006, Citizenship and Immigration Services (CIS) requested that the petitioner provide documentary evidence demonstrating that each of the beneficiaries is fully qualified to perform in the roles for which they are petitioned, such as copies of their driver's licenses.

In response, the petitioner submitted a copy of each of the beneficiaries' driver's licenses from Colombia. The director determined that in order for the beneficiaries to function as ice cream truck drivers, they must hold United States driver's licenses for the State of Tennessee. Absent such licenses, the beneficiaries are unable to drive legally and perform in the positions for which they are being petitioned.

Upon review, the Department of Motor Vehicles, State of Tennessee, provides information at its internet site¹ on who is not required to have a driver's license. Non-residents who possess a valid driver's license issued by their country, that is equivalent to the appropriate class or type of Tennessee license, are not required to have a Tennessee driver's license. Therefore, the director's decision to deny this petition on the basis that the beneficiaries did not have a valid Tennessee driver's license is incorrect. However, this petition cannot be approved for another reason.

The record contains Colombian driver's licenses for each of the beneficiaries named in this petition. The dates of their intended employment submitted on behalf of [REDACTED] overember 15, 2006. The Colombian driver's license [REDACTED] July 2006, and this is not valid for the period of employment. The licenses for [REDACTED] and [REDACTED] are illegible and the expiration dates cannot be determined. Also, the two English translations of these beneficiaries' driver's licenses [REDACTED] and [REDACTED] do not indicate the expiration dates.

Since these deficiencies were not mentioned in the director's decision, and the Colombian driver's licenses submitted are in the Spanish language, this case will be remanded in order to give the petitioner an opportunity to submit valid Colombian driver's licenses, issued prior to the petition's filing date, April 4, 2006, for the beneficiaries named in this petition. The director may also request any additional information or evidence that she deems necessary to adjudicate the matter at hand. The director may also request any additional evidence that is pertinent to the adjudication of this case. Please note that the petitioner can file a new petition if one or more of the beneficiaries do not possess the requisite Colombian driver's license.

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 of May 23, 2006 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.

¹ At the internet site (<http://www.state.tn.us/safety/driverlicense/dlgeneral.htm>), it indicates who is not required to have a driver's license:

- Non-residents who have in their immediate possession a valid driver license issued by their home state or country, equivalent to the appropriate class or type of Tennessee license. . . .