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U.S. Citizenship
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Services



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FILE: EAC 07 251 51475 Office: VERMONT SERVICE CENTER

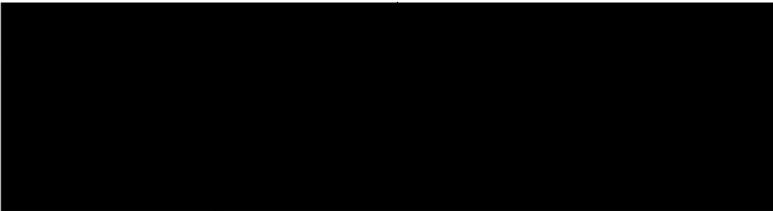
Date: DEC 27 2007

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
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the Director, Vermont Service Center (VSC), 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). Upon review, the AAO withdrew the director's decision and remanded it to the director for further action and consideration. The director has now issued a new decision and certified it to the AAO for review. The director's decision will be affirmed and the petition will be approved.

The petitioner describes itself as a multi-service vessel design, construction, and repair facility. It desires to employ the beneficiaries as welders pursuant to 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) from September 15, 2007 to June 1, 2008. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be made.

The director determined that sufficient countervailing evidence has been submitted to show that qualified persons in the United States are not available, that the employment policies of the Department of Labor have been observed and that the need for the services to be performed is temporary. The director approved the petition and certified the case to the AAO for review.

Upon review, the AAO withdrew the director's decision because the record of proceeding did not contain evidence that the beneficiaries possessed the minimum amount of experience to perform satisfactorily the job duties described in the proffered position. The AAO remanded the case to the director for further action.

On November 27, 2007, counsel stated in a letter to the VSC that although he had not received a request for evidence (RFE) from the VSC, in response to the remand by the AAO, he has enclosed documentary evidence to establish that the beneficiaries possess the requisite experience specified on the Form ETA 750. The petitioner also submitted an English translation of the work experience letter provided for each beneficiary named in the petition. Therefore, on December 17, 2007, the director approved the petition and certified his decision to the AAO for review.

Section 101(a)(15)(H)(ii)(b) of the Immigration 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) requires the petitioner to submit:

(C) *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 regulation at 8 C.F.R. § 103.2(b) states:

(3) *Translations.* Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete

and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The Application for Alien Employment Certification (Form ETA 750) at Part A, item 14 indicates that the minimum amount of experience needed to perform satisfactorily the job duties is two years of experience in the job being offered.

Upon careful review of the entire record of proceeding, the AAO finds that the record of proceeding contains sufficient evidence to establish that the beneficiaries possess the minimum amount of experience - two years of experience in the proffered position required to perform satisfactorily the job duties described on the Form ETA 750. The petitioner submitted an English translation of an excerpt from the Workman's Pass belonging to each of the beneficiaries. The excerpts contained the identification data of each beneficiary, as well as his work history, namely, the number of years the beneficiary was employed within the shipyard.

The petitioner has established that the beneficiaries possess the requisite experience to satisfactorily perform the duties of the proffered position. Accordingly, the petition will be approved.

ORDER: The director's decision of December 17, 2007 is affirmed. The petition is approved.