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U.S. Citizenship
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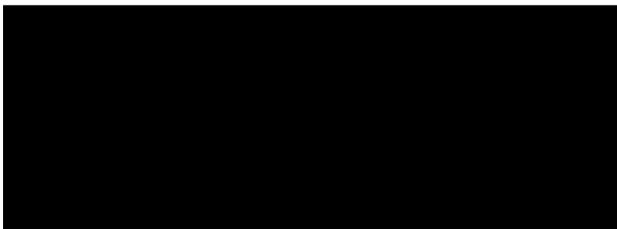
FILE: EAC 07 228 53462 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



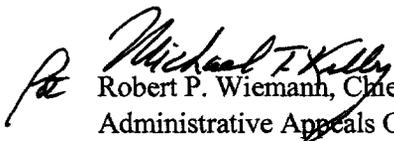
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

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. Wiemanh, Chief
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 The decision of the director will be withdrawn and the matter remanded to him for further action and consideration.

The petitioner is a Junior-B level hockey team and a member of the Western States Hockey League that consists of 13 teams from throughout the southwestern and western areas of the United States. It desires to extend its authorization to employ the beneficiary as a head coach 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 July 30, 2007 to July 29, 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's decision to approve the petition has now been certified to the AAO for review.

Upon careful review of the entire record of proceeding, the AAO finds that the evidence of record contains sufficient evidence to overcome the DOL's concerns regarding the petitioner's ongoing need for the beneficiary's services. However, the record does not support the director's decision to approve the petition. The record of proceeding does not contain evidence that the beneficiary possesses the minimum amount of experience in a related occupation, specifically, as a professional hockey player or assistant coach at Junior-B or a higher level, to perform satisfactorily the job duties described in the proffered position. Accordingly, the case will be remanded.

Section 101(a)(15)(H)(ii)(b) of 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) 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 a related occupation, specifically, "as a professional hockey player or assistant coach at Junior-B or a higher level."

The record, as it is presently constituted, contains the beneficiary's resume and Form I-797A (Notice of Action) that indicates the beneficiary was previously petitioned by Oklahoma Hockey Corporation DBA Tulsa Rampage under the receipt number, EAC-06-243-52090. The petition was approved for the beneficiary's classification as an H-2B nonimmigrant worker from November 21, 2006 to July 31, 2007.

The beneficiary's resume is not persuasive, as it has not been corroborated by other evidence of record, such as letters from the beneficiary's former employers that verify the coaching, scouting and playing experience stated in the resume. The Form I-797A contained in the record of proceeding has little weight. It shows that the beneficiary was granted H-2B classification valid from November 21, 2006 until July 31, 2007. The record, however, does not contain a copy of the beneficiary's nonimmigrant visa and the Form I-94 (Arrival/Departure Record) to show that the beneficiary was subsequently found eligible for the H-2B nonimmigrant visa, and thereafter, admitted into the United States on or after November 21, 2006. Absent such evidence, the AAO cannot determine the period of time, if any, that the beneficiary actually worked for the petitioner pursuant to the prior approved petition. The beneficiary has not been shown to have the requisite two years of experience in a related occupation, specifically, as a professional hockey player or assistant coach at Junior-B or a higher level. Absent documentary evidence of the beneficiary having two years of experience in a related occupation, specifically, as a professional hockey player or assistant coach at Junior-B or a higher level, the petition may not be approved.

Since this deficiency was not mentioned in the director's decision, this case will be remanded to the director in order to give the petitioner an opportunity to submit proof of the beneficiary's two years of experience in a related occupation, specifically, as a professional hockey player or assistant coach at Junior-B or a higher level. The director may also request any additional information or evidence that he deems necessary to adjudicate the matter at hand.

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 October 30, 2007 approving the petition is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision. Upon completion, the director shall certify the decision to the AAO for review.