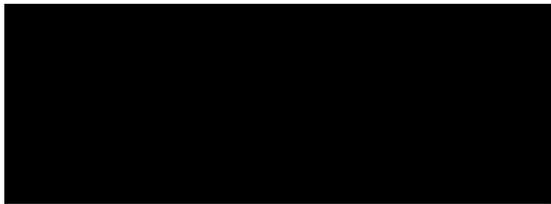




U.S. Citizenship
and Immigration
Services



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FILE: EAC 07 251 50865 Office: VERMONT SERVICE CENTER

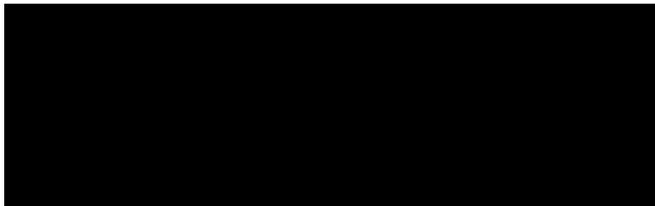
Date: OCT 23 2007

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, 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 The decision of the director will be withdrawn and the matter remanded to him for further action and consideration.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 describes itself as a multi-service vessel design, construction, and repair facility. It desires to employ the beneficiaries as plumbers 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'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 beneficiaries' 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 beneficiaries possess the minimum amount of experience 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 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) 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. The record, as it is presently constituted, does not contain evidence of the beneficiaries' experience.

The nonimmigrant visas indicate that the beneficiaries were previously petitioned by American Custom Yachts, Inc. under the receipt number, EAC-07-033-52555. The nonimmigrant visas were issued on May 9th and 10th of

2007 and expired on July 31, 2007. Although the petitioner states in its letter dated September 21, 2007 that it enclosed documentation showing the beneficiaries' experience, there is no such evidence in the record as it is presently constituted. There is no evidence in the record from the petitioner attesting to the positions and how long the beneficiaries have worked for the petitioner. The beneficiaries' nonimmigrant visas and I-94 Departure Records indicate that the beneficiaries were admitted into the United States on May 15, 2007 until July 31, 2007. These documents do not establish that the beneficiaries have two years of experience in the proffered position.

In conclusion, the evidence contained in the record of proceeding shows that the beneficiaries were in the United States for less than three months and have not been shown to have the requisite two years of experience in the job being offered. Absent documentary evidence of the beneficiaries having two years of experience in the job being offered, 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 beneficiaries' two years of experience in the job being offered. 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 5, 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.