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FILE: EAC 07 249 52657 Office: VERMONT SERVICE CENTER Date: OCT 31 2007

IN RE: Petitioner: [REDACTED]  
Beneficiaries: [REDACTED]

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.

*for Michael P. Kelly*  
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 The decision of the director will be affirmed in part and withdrawn in part, as follows. The decision of the director will be affirmed and the petition will be approved only for two of the workers in the petition, namely, [REDACTED] and [REDACTED]. The decision of the director will be withdrawn and the petition will be denied for the other 23 workers in the petition.

The petitioner is a fully integrated service company offering oil field construction services in pipeline, diving, fabrication and construction, both inland and offshore. The petitioner desires to employ the beneficiaries as welders from August 15, 2007 until June 1, 2008. The Department of Labor (DOL) determined that unique, complex, and persistent circumstances generated in the Gulf Region by Hurricanes Katrina and Rita made it impossible to determine whether a temporary labor certification should be issued in the present case.

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 DOL 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.

On certification, counsel, in his letter dated October 24, 2007, waives the 30-day period to submit a statement to the AAO. Therefore, the record is considered complete.

Upon careful review of the entire record of proceeding, the AAO finds that the evidence of record contains sufficient evidence to overcome DOL's concerns regarding whether the petitioner's need for the beneficiaries' services is temporary. However, the record does not support the director's decision to approve the petition in whole. The record of proceeding does not contain sufficient evidence that 23 of the named beneficiaries possess the minimum amount of experience to perform satisfactorily the job duties described in the proffered position. Accordingly, the petition will be approved only in part and as stipulated in this decision.

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.

As evidence of each of the beneficiaries' experience as welders, the petitioner submitted documentation in the form of letters and worker identification cards in Spanish with English translations. Upon review, the documentation (identification cards and letters) provided for 23 of the named beneficiaries in the petition is deficient. The letters either failed to state the amount of time the beneficiary worked for the company named in the letter or failed to state the amount of time that the beneficiary worked specifically as a welder for the company. Further, the petitioner did not provide evidence from appropriate management officials of the card issuing companies as to a minimum period of welding experience required for the issuance of the welder identification cards. Consequently, the letters and the identification cards provided by the petitioner do not establish that 23 of beneficiaries named in this petition have the minimum amount of experience to perform satisfactorily the job duties described for the proffered position, which according to the Form ETA 750 is two years of experience in the job being offered. In the absence of documentary evidence attesting to at least two years of experience in the proffered position, the petition may not be approved for 23 of the workers named in the petition.

After review, the director's decision is found to be incorrect with regard to the workers who may benefit from approval of the petition, as the evidence of record fails to establish that 23 of the 25 named workers possess the experience necessary to qualify them for H-2B status. The evidence of record establishes that, of the 25 workers named in the petition, only two - [REDACTED] and [REDACTED] possess the two years of experience in the offered job that the Form ETA750 specifies as the minimum level of experience required to perform satisfactorily the job that is the subject of this petition.

The regulation at 8 C.F.R. § 214.2(h)(9)(i)(A) instructs that the director's approval notice "shall cover only those beneficiaries approved for classification under section 101(a)(15)(H) of the Act." The Vermont Service Center's approval notice must specify that the only persons for whom the petition is approved are [REDACTED] and [REDACTED] accordingly, this petition will be approved in accordance with 8 C.F.R. § 214.2(h)(9)(i)(A). The Vermont Service Center will issue the appropriate approval notice, consistent with the above discussion.

This decision is without prejudice to the filing of a motion to reopen with the appropriate documentation and fee. 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 19, 2007 approving the petition is affirmed in part and withdrawn in part as follows.

**IT IS ORDERED:** The director's decision is affirmed and the nonimmigrant visa petition is approved only for two workers, [REDACTED] and [REDACTED] who are the only named workers for whom sufficient evidence was submitted of the two years of experience in the job offered that the ETA Form 750 specifies as the minimum experience required to perform satisfactorily the welder jobs that are the subject of this petition.

**IT IS ORDERED:** The decision of the director is withdrawn and the nonimmigrant visa petition is denied for the remaining 23 workers named in the petition, as the evidence of record fails to establish that they possessed the requisite two years of experience in the job being offered.