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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

D4

[redacted]

FILE: EAC 07 178 51825 Office: VERMONT SERVICE CENTER Date: SEP 7 2007

IN RE: Petitioner: [redacted]
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 regulation at 8 C.F.R. § 214.2(h)(9)(iii)(B)(2)(*ii*) requires the Administrative Appeal's Office (AAO) to review a service center director's recommendation for approval of an H-2B petition when the Department of Labor has denied a temporary labor certification. The present certification, issued on August 10, 2007 by the director of the Vermont Service Center under Form I-290C (Notice of Certification) receipt number EAC0723050386, was issued on an erroneous basis, namely, that the AAO had withdrawn the certification decision previously issued in this case and had remanded the matter for further action. The director's present certification decision will be withdrawn: the decision of the AAO on the previous certification will be affirmed; and the petition remains approved as specified in the AAO's previous decision, that is, for all the workers named in the petition except [redacted]

On July 23, 2007, under Form I-290C receipt number EAC0721451320, the service center director certified his previous decision in this matter, which recommended approval of the initial petition as filed. On August 14, 2007, the petitioner withdrew [redacted] from consideration as a beneficiary of the petition, thereby reducing the number of beneficiaries from 20 to 19. On August 23, 2007, the AAO acted upon the July 2007 certification by issuing a decision that approved the petition for the period of intended employment and for the 19 named workers remaining in the petition. The AAO decision orders as follows:

> The decision of the director is affirmed. The nonimmigrant petition is approved for all of the named beneficiaries, except [redacted] whose name was withdrawn by the petitioner.

As evident in the order, the AAO fully adjudicated the prior certification, and contrary to the narrative in the present certification, the AAO did not remand the case to the service center director. Until its decision of August 23, 2007, the AAO retained complete jurisdiction over the matter of this H-2B petition, which it obtained by the prior certification of July 23, 2007. Consequently, the present certification, dated August 10, 2007, and the August 3, 2007 request for additional action that preceded it, were erroneously issued. They have no effect on the outcome of this petition, which already has been determined by the AAO's prior decision. Further, during the AAO's adjudication of the prior certification the petitioner provided the returning worker attestation which was the subject of the director's August 3, 2007 request for additional documentation. Also, the present certified decision fails to account for the fact that, pursuant to the petitioner's withdrawal of [redacted] the AAO's decision on the prior certification approved the petition for only 19 of the 20 beneficiaries initially named in the petition.

The following actions are compelled by the facts outlined above. The director's decision of August 10, 2007 will be withdrawn; the AAO's decision dated August 23, 2007 will be affirmed; and the petition remains approved as specified in that AAO decision, that is, for all the workers named in the initial petition except [redacted]

The Vermont Service Center will issue the appropriate approval notice.

ORDER: The director's decision of August 10, 2007 is withdrawn; the AAO's decision of August 23, 2007 is affirmed; and the petition remains approved as specified in that AAO decision, that is, for all the workers named in the initial petition except [redacted]