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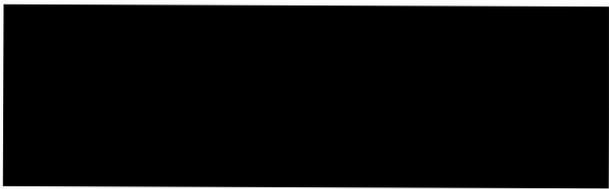
U.S. Department of Homeland Security  
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**U.S. Citizenship  
and Immigration  
Services**

D4



**APR 11 2008**

FILE: EAC 08 084 51929 Office: VERMONT SERVICE CENTER Date:

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 recommended to be 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). The decision of the director will be withdrawn and the matter remanded to him for further action and consideration.

The petitioner is a Mississippi Limited Liability Company supplying labor and industrial services for the marine and petroleum/chemical industries in the Mississippi Gulf Coast area. 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)(H)(ii)(b), from November 1, 2007 to August 31, 2008 (see the dates of intended employment specified in the 2007 newspaper advertisement (Sun Herald Classifieds, Monday, September 3, 2007)). 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 the DOL have been observed and that the need for the services to be performed is temporary. The petition is now before the AAO on certification of the director's decision recommending approval of the petition.

Upon careful review of the entire record of proceeding, the AAO finds that 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.

The petition was initially filed for the employment of four (4) H-2B workers. The director states in his decision that one of the workers [REDACTED] is ineligible for new employment and an extension of stay. Therefore, the director's decision recommending approval of the petition is for the remaining three (3) H-2B workers named in the petition.

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.

Upon review, the record, as it is presently constituted, does not contain evidence of the beneficiaries' experience. Therefore, the AAO cannot ascertain whether the beneficiaries have the two years of experience in the job being offered. Absent documentary evidence of the beneficiaries' 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 three (3) beneficiaries' two (2) years of experience in the job being offered. The director must afford the petitioner a reasonable time to provide evidence pertinent to this issue, and any other evidence the director may deem necessary to adjudicate the matter at hand. The director shall then render a new decision based on the evidence of record as it relates to the issue, and certify that decision to the AAO for review.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

**ORDER:** The director's decision of April 7, 2008 recommending approval of the petition is withdrawn. The matter is remanded for further action and consideration with regard to the three (3) beneficiaries, consistent with the above discussion, and entry of a new decision. Upon completion, the director shall certify the decision to the AAO for review.