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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

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FILE: EAC 07 230 51734 Office: VERMONT SERVICE CENTER Date: **APR 07 2008**

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.

Robert P. Wiemann
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: In August of 2007 the Director, Vermont Service Center, issued a decision recommending approval of this H-2B nonimmigrant petition for all of the 91 workers initially named in the petition, and he certified the decision to the Administrative Appeals Office (AAO) for review as required by 8 C.F.R. § 214.2(h)(9)(iii)(B)(2)(ii). In its decision on that certification, dated October 31, 2007, the AAO affirmed the director's decision in part and withdrew the director's decision in part, as follows: the AAO affirmed the director's decision and approved the petition for 60 of the 91 workers named in the petition; the AAO also withdrew the director's decision and denied the petition for the other 31 workers named in the petition.

The AAO's October 2007 decision denied the petition for 31 of the 91 named workers because the evidence of record did not establish that those 31 workers had the experience that the petitioner's application for labor certification (Form ETA 750) specifies as necessary for performance of the job.

The motion now before the AAO (1) withdraws three (3) of the 31 workers for whom the AAO's October 2007 decision denied the petition, and (2) requests that the AAO reopen its prior decision and approve the petition for the remaining 28 workers for whom the AAO's previous decision denied the petition, thus elevating to 88 the total number of named workers for whom the petition is approved. The motion includes the petitioner's withdrawal of the following three (3) persons for whom the petition was denied in the AAO's prior decision: [REDACTED]; and [REDACTED] p. Counsel states that these three workers have been terminated since the filing of the original petition. These withdrawals reduce to 88 the number of workers who are named as beneficiaries of the petition.

The matters submitted on motion have remedied the evidentiary deficiency with regard to the remaining 28 workers regarding which the AAO had denied the petition. As supplemented by the matters submitted on motion, the record of proceeding now contains sufficient evidence that these 28 workers - as well as the 60 workers for whom the petition was approved in the AAO's previous decision - possess the requisite two years of experience to perform satisfactorily the job duties described in the proffered position. Accordingly, the motion is granted.

As the motion is granted, the AAO's decision of October 31, 2007 will be modified so as to now approve the petition for all of the 88 workers remaining in the petition (that is, for all of the workers initially included in the petition except [REDACTED]; and [REDACTED] (the three workers whom this motion has withdrawn from the petition.))

The Vermont Service Center will issue the appropriate approval notice, consistent with the above discussion.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The motion is granted. The AAO's decision of October 31, 2007 is modified to approve the petition for 88 workers, that is, for all of the workers initially named in the petition except [REDACTED] and [REDACTED]. The petition is approved for these 88 workers.