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U.S. Citizenship
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D4

FILE: EAC 07 264 52875 Office: VERMONT SERVICE CENTER Date: MAR 06 2008

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.

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 The decision of the director will be withdrawn and the matter remanded to him for further action and consideration.

The petitioner is a marine and fabrication company located along the Gulf of Mexico that provides offshore drilling rig overhaul, repair, upgrade and conversion. The petitioner also provides subcontract marine construction and fabrication for the United States Navy. The petitioner desires to continue 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)(15)(H)(ii)(b) from August 1, 2007 until June 1, 2008. The petition indicates that the beneficiaries will be working in Orange, Texas. 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 DOL's employment policies have been observed and that the need for the services to be performed is temporary. The director's decision recommending approval of the petition has now been certified to the AAO for review.

Upon careful review of the entire record of proceedings, the record does not support the director's decision to approve the petition. The record of proceedings 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 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 one year 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 Signal International, LLC under the receipt numbers EAC-06-236-50596, EAC-06-243-52027, EAC-06-243-52131, EAC-06-230-52541, and EAC-06-243-52067. The beneficiaries' nonimmigrant visas were issued in November and December of 2006 and February of 2007 and expired on July 31, 2007. There is no evidence in the record, such as a letter from the petitioner, attesting to the positions previously held by the beneficiaries and how long the beneficiaries have worked for the petitioner. The record of proceedings does not contain evidence of the beneficiaries having previous employment with another employer as a welder. All of the beneficiaries' nonimmigrant visas and I-94 Departure Records indicate the beneficiaries were admitted into the United States from November or December of 2006, or January or February of 2007, until July 31, 2007. One or two of the beneficiaries' I-94s indicate an departure date of August 9, 2007 or August 10, 2007. These documents do not establish that the beneficiaries have one year of experience in the proffered position.

In conclusion, the evidence contained in the record of proceedings does not establish that the beneficiaries have the requisite one year of experience in the job being offered. Absent documentary evidence of the beneficiaries having one year 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' one year 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 February 22, 2008 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.