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AUG 17 2005

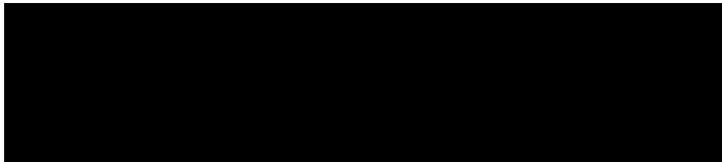
FILE: EAC 05 013 53539 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



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.

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Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: By a decision dated January 3, 2005, the Administrative Appeals Office (AAO) withdrew the director's decision of December 27, 2004 and denied the H-2B petition. The AAO now reopens this matter on its own motion, pursuant to 8 C.F.R. §103.5(a)(5)(ii), for the purpose of entering a new decision to correct a procedural error committed by the director after the AAO decision. The previous decision of the AAO, dated January 3, 2005, is affirmed: the director's decision of December 27, 2004 is withdrawn, and the petition is denied. Also, the director's decision of February 16, 2005, which was not authorized, is withdrawn.

On December 27, 2004, the director approved the nonimmigrant petition and certified his decision to the AAO for review as required by 8 C.F.R. § 214.2(h)(9)(iii)(B)(2)(ii). In its January 3, 2005 decision, the AAO withdrew the director's decision and denied the petition. The AAO's decision was self-executing, required no subsequent decision by the director to make it effective, and was sufficient in itself to withdraw the director's December 2004 decision and deny the petition. However, on February 16, 2005 the director erred by issuing a decision that purported to implement the AAO's January 3, 2005 decision by denying the petition.

The director's latest decision is a nullity, because it was beyond the his authority. It should not have been issued. Furthermore, that decision was erroneous to the extent that it suggested that a petitioner may appeal an AAO decision on a director's certification of an H-2B decision. *See* 8 C.F.R. § 214.2(h)(9)(iii)(B)(2)(ii). The AAO therefore has reopened this proceeding on its own motion in order to address the director's procedural error.

By letter mailed on June 22, 2005, with a copy of the AAO decision of January 3, 2005 enclosed, the AAO notified the petitioner that it was reopening the case, and that the petitioner was entitled to submit a brief within 30 days to address the grounds for denial of the petition that were stated in the AAO's January 2005 decision. As the petitioner has submitted no matters in response to the notice of its right to do so, there is nothing to adjudicate. Per 8 C.F.R. § 214.2(h)(9)(iii)(B)(2)(ii), this decision is not subject to appeal.

ORDER: The decision of the AAO dated January 3, 2005 is affirmed. The director's decisions of December 27, 2004 and February 16, 2005 are withdrawn. The petition is denied.