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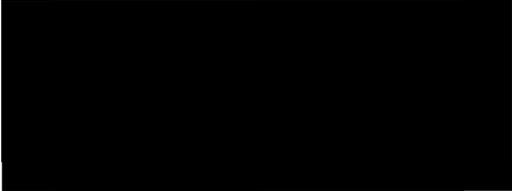
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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MAR 02 2010

FILE: EAC 09 069 50003 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed, although moot due to the passage of time.

The petitioner is engaged in shipbuilding and it seeks to employ the beneficiaries as pipefitters pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(ii)(b), for the period from December 15, 2008 until October 15, 2009. The Department of Labor (DOL) determined that the petitioner had submitted insufficient evidence for the issuance of a temporary labor certification. The director determined that the countervailing evidence submitted by the petitioner was insufficient to overcome the DOL's decision, concluding that the petitioner failed to submit sufficient evidence to demonstrate the petitioner's peakload need for the services or labor.

On May 8, 2009, counsel for the petitioner submitted the Form I-1290B to appeal the underlying petition. The petitioner marked the box at part two of the Form I-290B to indicate that no supplemental brief and/or additional evidence will be submitted. Thus, the AAO deems the record complete as currently constituted.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

On the Form I-290B, the counsel for the petitioner states the following:

In a related case based upon identical facts in which we petitioned for employees in a different trade, USCIS has issued a notice of certification. Given the identical nature of these cases, for which the sole difference in the trade (electricians vs. carpenters), we ask for a favorable determination consistent with a finding made by the USCIS to certify a case on identical facts.

As the petitioner fails to specifically identify any erroneous conclusion of law or statement of fact for the appeal and as no additional evidence is presented on appeal to overcome the decision of the director, the appeal must be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v). Moreover, counsel's reference on appeal to an unidentified, separate record of proceeding is neither relevant nor persuasive with regard to this matter.

Finally, it is also noted that the petitioner requested the beneficiary's services from December 15, 2008 until October 15, 2009. Therefore, the period of requested employment has passed.

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

ORDER: The appeal is summarily dismissed. The petition is denied.