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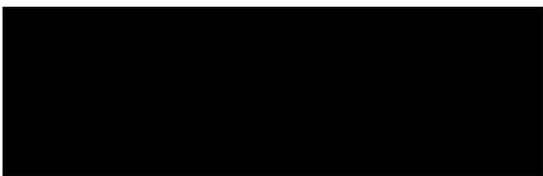
U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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Services

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FILE: EAC 07 141 50133 Office: VERMONT SERVICE CENTER

Date: **JUL 18 2007**

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:

SELF-REPRESENTED

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 T. 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). Upon review, the AAO withdrew the director's decision and remanded it to the director for further action and consideration. The director has now issued a new decision and certified it to the AAO for review. The director's decision will be affirmed and the petition will be denied.

The petitioner operates a retail gift shop. It seeks to employ the beneficiary as a retail clerk for nine and one-half months. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be made because the petitioner had not advertised during the required time period.

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 director approved the petition and certified the case to the AAO for review. Upon review, the AAO withdrew the director's decision because the record of proceeding did not contain evidence that the beneficiary possessed the requisite education and experience in the job being offered. The AAO remanded the case to the director for further action.

On May 23, 2007, the director requested that the petitioner submit documentary evidence to support its claim that the beneficiary possessed the requisite education and experience, as specified on the Form ETA 750.

On May 24, 2007, the director received the petitioner's response to its request for additional evidence. The director's decision to deny the petition has now been certified to the AAO for review.

Upon careful review of the entire record of proceeding, the AAO finds that the record of proceeding does not contain sufficient evidence to establish that the beneficiary possesses the minimum amount of education and experience to perform satisfactorily the job duties described in the proffered position. Accordingly, the petition will be denied.

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 indicates that the minimum amount of education and experience needed to perform satisfactorily the job duties is three years of college education and two years of experience in the job being offered or one year of experience in a related occupation, specifically, retail sales in a computerized store.

Upon review, the record, as it is presently constituted, contains an English translation of the beneficiary's high school or secondary education document. The English translation of the document indicates the beneficiary completed classes in general studies with additional studies of the English language on June 2, 2000. The translation states further that the candidate is prepared to pursue further studies in a university or college. The record also contains an English translation of the beneficiary's university diploma that states the beneficiary has studied in the subject of linguistics with specialization in Ukrainian and Slavic languages and graduated on May 6, 2004. Therefore, the beneficiary has the requisite education (three years of college education) specified on the Form ETA 750.

The petitioner states that the beneficiary's work experience while employed by the petitioner in 2005 and 2006 should be considered as two seasons of experience. The petitioner states that the experience noted, given the seasonal nature of the job, was for seasons of experience, which it expressed as years. The petitioner also states that the beneficiary's employment with the petitioner for two seasons and at the Whitehall Inn in 2004, is considered as three years of seasonal employment. The petitioner explains that to move to the calendar interpretation for the current petition would be a different application of the standard previously applied to the same beneficiary. However, the advertisement for the job offered in the instant petition states that "past experience must include one season of experience serving the public in a retail setting." The petitioner has not provided any evidence to show that its previous labor certifications (2005 and 2006) required season(s) of experience and not year(s) of experience. Absent documentary evidence of the beneficiary's two years of experience in the job being offered or one year of experience in a related occupation, specifically, retail sales in computerized store, the petition may not be approved.

In its letter dated January 3, 2007, the petitioner states that the beneficiary had been previously employed by the petitioner for a total of ten and one-half months (early July 2005 to mid October 2005 and again from June to December of 2006). The beneficiary indicates in her curriculum vitae that she worked at the Whitehall Inn, Camden, Maine, and the McDonald's Restaurant in Augsburg, Germany, from June – September of 2002 and 2003. However, there is no documentary evidence to support the beneficiary's work experience at Whitehall Inn or the McDonald's restaurant in Augsburg, Germany. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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 May 25, 2007 is affirmed. The petition is denied.