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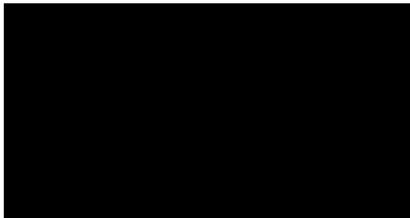
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: EAC 07 117 52255 Office: VERMONT SERVICE CENTER Date: AUG 06 2007

IN RE: Petitioner:
Beneficiary:



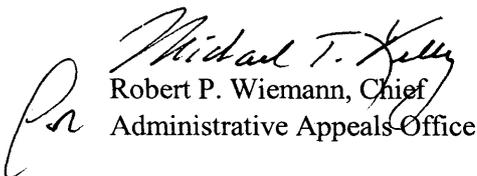
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner operates a hotel. The petitioner seeks to employ three named beneficiaries as hotel clerks pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(ii)(b) from October 1, 2006 until September 29, 2007. The director determined that the petitioner had filed the instant petition using a labor certification that had already been utilized for the maximum allowable number of alien workers and denied the petition. The director also noted that the beneficiaries were out of status.

On appeal, the petitioner states that visas were never issued for the 20 approved workers. The petitioner also asserts that the beneficiaries have been out of status for a short time due to the fact that the hotel faced delays in reopening after Hurricane Katrina and Rita.

The instant petition was filed on March 23, 2007. The record indicates that the beneficiaries are all currently out of status.

The regulation at 8 C.F.R. § 214.2(h)(2)(i) states in pertinent part:

(D) Change of employers. If the alien is in the United States and seeks to change employers, the prospective new employer must file a petition on Form I-129 requesting classification and extension of the alien's stay in the United States. If the new petition is approved, the extension of stay may be granted for the validity of the approved petition. . .

The regulation at 8 C.F.R. § 214.2(h)(2)(v) states:

(14) Extension of visa petition validity. The petitioner shall file a request for a petition extension on Form I-129 to extend the validity of the original petition under section 101(a)(15)(H) of the Act. Supporting evidence is not request unless requested by the director. A request for a petition extension may be filed only if the validity of the original petition has not expired.

Since the visa classification for the three beneficiaries has expired, the beneficiaries are not eligible for an extension of H-2B classification. Moreover, one beneficiary was last admitted into the United States in B-2 classification and thus cannot apply for an extension of the H-2B classification since the B-2 classification has expired and she is currently not in a valid H-2B classification.

The regulation at 8 C.F.R. § 214.2(h)(2) states in pertinent part:

(iii) Named beneficiaries. . . . If all of the beneficiaries covered by an . . . H-2B labor certification have not been identified at the time a petition is filed, multiple petitions naming subsequent beneficiaries may be filed at different times with a copy of the same labor certification. Each petition must reference all previously filed petitions for that labor certification.

(iv) *Substitution of beneficiaries.* Beneficiaries may be substituted in H-2B petitions that are approved for a group, or H-2B petitions that are approved for unnamed beneficiaries, or approved H-2B petitions where the job offered to the alien(s) does not require any education, training, and/or experience. . . .

The petitioner filed Form I-129, Petition for a Nonimmigrant Worker, on March 23, 2007, to request H-2B classification and extension of the beneficiaries' stay in the United States. In its response to the director's request for evidence, the petitioner explained that it wanted to utilize the labor certification in its previously approved petition, EAC 06 233 53019. The petitioner states on appeal that it did not utilize any of the 20 approved visa allocations; therefore, three visa allocations are available for usage by the petitioner.

The record of proceeding contains the labor certification (Form ETA 750) and the final determination notice that indicated the Department of Labor approved a temporary labor certification for 20 hotel clerks for the period from October 1, 2006 through September 29, 2007. However, the record of proceeding does not contain a copy of the Citizenship and Immigration Services' (CIS) approval notice (Form I-797B) for the petitioner's previously approved nonimmigrant petition, EAC 06 233 53019. The petitioner has not provided any documentary evidence to establish that none of the 20 approved nonimmigrant visas have been issued. Consequently, the petitioner has not established that a petition has been approved for 20 H-2B nonimmigrant workers in which three remaining visas can be utilized for the beneficiaries in the instant petition. 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)). Absent such evidence, CIS cannot utilize the labor certification the petitioner filed with EAC 06 233 53019 for the current petition.

The file record of proceeding contains a request for oral argument. The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, CIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. See 8 C.F.R. § 103.3(b). In this instance, the request identifies no unique factors or issues of law to be resolved. In fact, the request set forth no specific reasons why oral argument should be held. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

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

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