

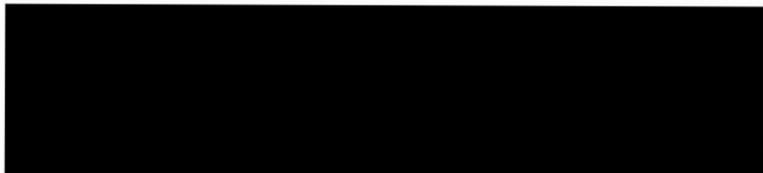
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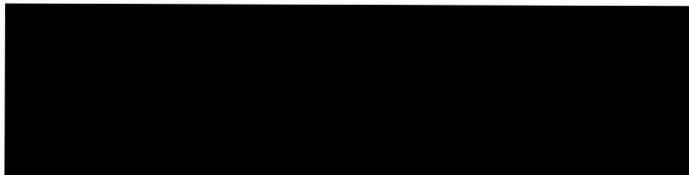


FILE: EAC 07 229 53136 Office: VERMONT SERVICE CENTER Date: **APR 24 2008**

IN RE: Petitioner: [Redacted]
Beneficiaries: [Redacted]

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.

James Blinzinger, for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (VSC), certified a decision recommending approval of the H-2B petition to the Administrative Appeals Office (AAO) for review, as required by 8 C.F.R. § 214.2(h)(9)(iii)(B)(2)(ii), on September 24, 2007. On October 31, 2007, the AAO withdrew the director's decision and remanded the petition for the director to issue a request for additional evidence (RFE) and to certify a new decision to the AAO after consideration of the petitioner's response to the RFE. The director issued an RFE on November 9, 2007 that allowed the petitioner to respond by February 4, 2008. No response to the RFE was received during that period. On March 18, 2008 the director again recommended approval of the petition and certified the matter to the AAO for review.

As discussed below, upon careful review of the entire record of proceeding, the evidence of record does not support the director's decision to approve the petition. Accordingly, the director's decision will be withdrawn and the petition will be denied although the matter is moot due to the passage of time.

The Form I-129, Petition for a Nonimmigrant Worker, was filed in order to classify 55 named beneficiaries as H-2B welders from October 1, 2007 to March 1, 2008. In its previous decision, the AAO found that the record of proceeding failed to establish (1) that there is a contractual arrangement that obligates the petitioner to provide and [REDACTED] to use 55 H-2B welders as specified in the petition; and (2) that the workers named in the petition satisfy the requirements TYL has specified for the H-2B welders.

The AAO's decision dated October 31, 2007 notified the petitioner of material evidentiary deficiencies that precluded approval of the petition. The AAO's decision also instructed the director to issue a request for evidence (RFE) to afford the petitioner an opportunity to provide the information and evidence requested by the director in the RFE and deemed necessary by the director to adjudicate the matter at hand.

On November 9, 2007, the VSC issued a request for evidence in accordance with the AAO's order of October 31, 2007. The petitioner was given until February 4, 2008 to respond to the request for evidence. No additional evidence was submitted in response to the request for evidence.

The RFE issued by the VSC notified the petitioner of material evidentiary deficiencies in the record of proceeding that precluded approval of the petition. The RFE requested that the petitioner provide particular types of documentary evidence to address the specified evidentiary deficiencies. The RFE notified the petitioner that its response must be received by the VSC on or before February 4, 2008. As the petitioner did not respond to the RFE within the time allotted by the VSC, the petition is denied for the reasons set forth in the RFE and for abandonment. *See* 8 C.F.R. § 103.2(b)(13).

Moreover, it is noted that the petitioner requested the beneficiaries' services from October 1, 2007 to March 1, 2008. Therefore, the matter is moot as the period of requested employment has passed.

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. The petitioner has not met that burden.

ORDER: The director's decision dated March 18, 2008 is withdrawn. The petition is denied although the matter is moot due to the passage of time.