

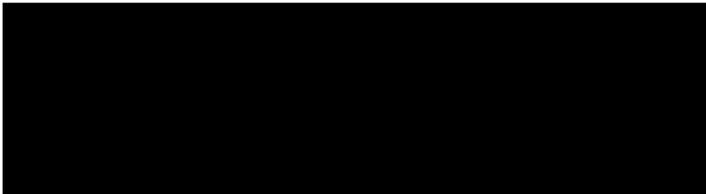
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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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FILE: EAC 07 265 50791 Office: VERMONT SERVICE CENTER

Date: FEB 21 2008

IN RE: Petitioner:
Beneficiaries:



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 
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: On October 9, 2007, a decision by the Director, Vermont Service Center (VSC) recommending approval of the H-2B petition was certified to the Administrative Appeals Office (AAO) for review, as required by 8 C.F.R. § 214.2(h)(9)(iii)(B)(2)(ii). On November 20, 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 29, 2007 that allowed the petitioner to respond by January 13, 2008. No response to the RFE was received during that period. By facsimile message (fax) dated January 28, 2008 and received by the VSC on that date, an employee of a labor consulting company that had been acting as the petitioner's "active representative" requested that the petition be withdrawn.¹ On February 7, 2008 the director again recommended approval of the petition and certified the matter to the AAO for review.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 Accordingly, the director's decision will be withdrawn and the petition will be denied.

The Form I-129, Petition for a Nonimmigrant Worker, was filed in order to classify 400 unnamed beneficiaries as H-2B ironworkers in Louisiana from October 1, 2007 to August 31, 2008. In its previous decision, the AAO found that the record of proceeding failed to establish (1) that there was a need for 400 ironworkers as asserted, and (2) that the asserted need satisfied one of the H-2B temporary need categories at 8 C.F.R. § 214.2(h)(6)(ii)(B) that is, one-time occurrence, seasonal need, peakload need, or intermittent need.

The AAO's decision dated November 20, 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 29, 2007, the VSC issued a request for evidence in accordance with the AAO's order of November 20, 2007. The petitioner was given until January 13, 2008 to respond to the request for evidence. No additional evidence was submitted in response to the request for evidence. Instead, in fax dated January 28, 2008 that was transmitted faxed to the VSC on that date, the "active representative" for the petitioner stated that the petitioner had decided to withdraw the instant petition. The fax stated that due to the delays of the petition, the employer lost the contracts upon which the petition was based.

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 January 13, 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).

The attempt by the petitioner's "active representative" to withdraw the petition is not effective as the record indicates that the person is not acting as a licensed attorney and is not otherwise eligible to represent the petitioner in proceedings before the Citizenship and Immigration Services. See 8 C.F.R. § 292.1

¹ The Form G-28 (Notice of Entry of Appearance as Attorney or Representative) identifies the author of the fax as [REDACTED] and states: "We are a labor consulting company that deals with foreign labor certification. We are the active representative for [the petitioner]."

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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 February 7, 2008 is withdrawn. The petition is denied.