

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

D 4

FILE: EAC 08 092 51184 Office: VERMONT SERVICE CENTER Date: MAR 28 2008

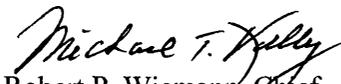
IN RE: Petitioner:
Beneficiaries:

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:

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: The nonimmigrant visa petition was recommended to be approved by the Director, Vermont Service Center (VSC), 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). The decision of the director will be withdrawn and the matter remanded to him for further action and consideration.

The petitioner is a Mississippi Limited Liability Company supplying labor and industrial services for the marine and petroleum/chemical industries in the Mississippi Gulf Coast area. It desires to employ the beneficiaries as fitters pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(H)(ii)(b), from February 7, 2008 to September 1, 2008 (see the dates of intended employment specified at item 8 of Part 5 of the Form I-129 (Petition for a Nonimmigrant Worker)). The Department of Labor (DOL) determined that unique, complex, and persistent circumstances generated in the Gulf Region by Hurricanes Katrina and Rita made it impossible to determine whether a temporary labor certification should be issued in the present case.

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 petition is now before the AAO on certification of the director's decision recommending approval of the petition.

Upon careful review of the entire record of proceeding, the AAO finds that the record does not support the director's decision to approve the petition. The record of proceeding does not contain evidence that the beneficiaries possess the minimum amount of experience to perform satisfactorily the job duties described in the proffered position. Accordingly, the case will be remanded.

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, item 14 indicates that the minimum amount of experience needed to perform satisfactorily the job duties is two years of experience in the job being offered.

Upon review, the record, as it is presently constituted, does not contain evidence of the beneficiaries' experience. Therefore, the AAO cannot ascertain whether the beneficiaries have the two years of experience in the job being offered. Absent documentary evidence of the beneficiaries' two years of experience in the job being offered, the petition may not be approved.

Since this deficiency was not mentioned in the director's decision, this case will be remanded to the director in order to give the petitioner an opportunity to submit proof of the beneficiaries' two (2) years of experience in the job being offered. The director must afford the petitioner a reasonable time to provide evidence pertinent to this issue, and any other evidence the director may deem necessary to adjudicate the matter at hand. The director shall then render a new decision based on the evidence of record as it relates to the issue, and certify that decision to the AAO for review.

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

ORDER: The director's decision of March 20, 2008 recommending approval of the petition is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision. Upon completion, the director shall certify the decision to the AAO for review.