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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

A4

FILE: EAC 09 063 50662 Office: VERMONT SERVICE CENTER Date: APR 05 2010

IN RE: Petitioner: [REDACTED]
Beneficiary: [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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed, although moot due to the passage of time.

The petitioner is engaged in shipbuilding and it seeks to employ the beneficiaries as pipefitters pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(ii)(b), for the period from April 1, 2009 until August 1, 2009. The Department of Labor (DOL) determined that the petitioner had submitted insufficient evidence for the issuance of a temporary labor certification. The director determined that the countervailing evidence submitted by the petitioner was insufficient to overcome DOL's decision.

On April 17, 2009, counsel for the petitioner submitted the Form I-290B to appeal the denial of the underlying petition. The petitioner marked the box at part two of the Form I-290B to indicate that no supplemental brief and/or additional evidence will be submitted. Thus, the AAO deems the record complete as currently constituted.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

On the Form I-290B, the counsel for the petitioner states the following:

On December 17, 2009, we filed with the Director applications for the H-2B visas for different shipyard trades (Carpenters, Electricians, Welders, Shipfitters, Pipe Fitters, and unknown workers) based on identical facts: six vessel construction contracts totaling \$232 million dollars that were backlogged due to Hurricanes Katrina and Gustav. All of these trades are required to construct the vessels under these contracts.

On February 27, 2009, we received a Notice of Certification for the unknown workers (please see enclosed). On March 11, 2009, we received this determination to deny this case.

In [t]he Notice of Certification, there is no mention that the unknown workers were granted certification because of any particularity with their trade. The notice simply states that the evidence presented was sufficient to establish peak load need.

Because we provided sufficient evidence to establish our temporary need (based on the Notice of Certification in an identical case), and in the interest of consistency, we request certification in this case.

In regards to the director's conclusions that the petitioner failed to submit sufficient evidence to show the petitioner's need for the services or labor is a peakload need, the petitioner fails to

identify any erroneous conclusion of law or statement of fact for the appeal. As no additional evidence is presented on appeal to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

In addition, counsel for the petitioner noted that the United States Citizenship and Immigration Services (USCIS) approved other petitions that had been previously filed by the petitioner. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

It is also noted that the petitioner requested the beneficiary's services from April 1, 2009 until August 1, 2009. Therefore, the period of requested employment has passed.

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

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