

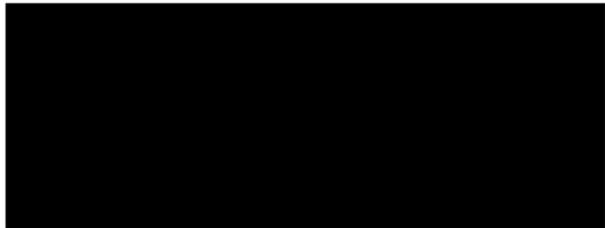
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



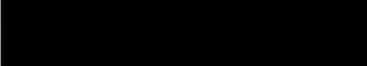
**U.S. Citizenship
and Immigration
Services**



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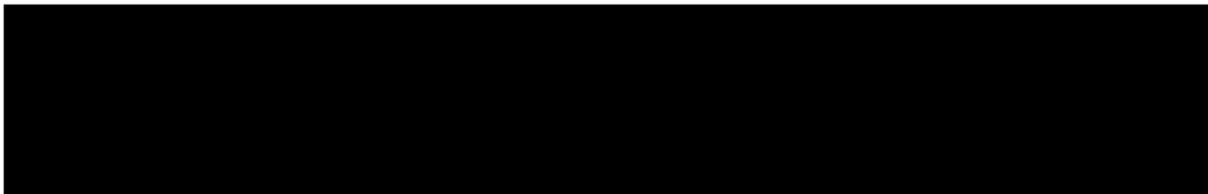
DATE: FEB 15 2012

Office: VERMONT SERVICE CENTER

FILE: 

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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.¹

The petitioner is engaged in commercial shrimping and seeks to employ the beneficiaries as shrimp boat deckhand/header 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, 2011 until February 1, 2012.

On May 19, 2011, the director denied the petition concluding that the petitioner did not establish that the beneficiaries possessed the requisite experience listed on the labor certification and denied the petition.

The regulation at 8 C.F.R. 214.2(h)(6)(vi)(C) states:

Alien's qualifications. In petitions where the temporary labor certification application requires certain education, training, experience, or special requirements of the beneficiary who is present in the United States, documentation that the alien qualifies for the job offer as specified in the application for such temporary labor certification. This requirement also applies to the named beneficiary who is abroad on the basis of special provisions stated in paragraph (h)(2)(iii) of this section;

The Application for Alien Employment Certification (Form ETA 750) at Part F indicates that “one month of sea-time experience is required.” In the director’s denial decision, he stated that the petitioner had not submitted sufficient evidence to establish that each beneficiary has the required “one month of sea-time experience.”

Upon review of the record, the petitioner submitted an H-2B returning worker attestation that indicated each beneficiary and their dates of admission to the United States in H-2B status. The petitioner also submitted copies of the H-2B visas for each beneficiary. The prior H-2B visas for the beneficiaries were sponsored by the petitioner or by other shrimping companies.

In addition, in response to the director’s request for evidence, the petitioner stated that “all beneficiaries have worked in the same requested capacity; they possess more than the required one-month sea-time.” The petitioner submitted trip settlements which named some of the beneficiaries and the total days they worked at sea. On appeal, the petitioner submits a letter from the petitioner’s Fleet Supervisor, who has been responsible for 20 shrimpboats since 1994. The author states the following:

¹ According to the petition, the named beneficiaries are not in the United States. Upon approval, the petitioner requested that USCIS notify the consulates in Matamoros, Mexico and Managua, Nicaragua so that the beneficiaries may obtain their visas abroad. The AAO notes that U.S. Citizenship and Immigration Services (USCIS) records indicate that at least one of the beneficiaries may be inadmissible to the United States. However, admissibility determinations will be made at the consulate or at the port of entry. The visa petition procedure is not the forum for determining substantive questions of admissibility under the immigration laws. Regardless of admissibility issues, when eligibility for the claimed status is established, the petition should be granted. *Matter of O*, 8 I&N Dec. 295 (BIA 1959).

[The petitioner] has worked with H-2B visas for several years and I am familiar with the men on the list of Beneficiaries for the H2B visas. These Mexican and Nicaraguan nationals are experienced, reliable, hardworking fishermen whose skills and work ethics contributed to efficient completion of trips. Each trip is 30 or more days and if mechanical problems arise that forces a boat into dock for repairs the trip will continue after repairs are made.

On appeal, the petitioner has overcome the concerns addressed in the director's decision. The petitioner submitted evidence to establish that the beneficiaries possess the required 30 days of sea-time experience. In addition, the petitioner established that it has a recurrent seasonal need of hiring shrimp boat deckhand/header from April until February.

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 met that burden.

ORDER: The appeal is sustained. The visa petition is approved.