

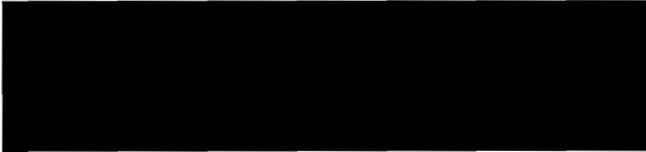
PUBLIC COPY



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent disclosure of unwarranted
invasion of personal privacy

DJ



FILE: EAC 08 221 52496 Office: VERMONT SERVICE CENTER

Date: SEP 17 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was recommended to be approved by the Acting Director, Vermont Service Center, 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 acting director will be affirmed and the petition will be approved.

The petitioner operates a winter grounds maintenance company in Ionia, New York, that provides snow and ice management services to its clients during the winter season. It desires to extend the stay and change the employment of the beneficiaries to the current petitioner. The petitioner intends to hire the beneficiaries as groundkeepers 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) from October 1, 2008 through April 30, 2009. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be made because the past filing history, including this application, reveals that the petitioner has a permanent year-round need for the services or labor to be performed. Accordingly, the DOL decided that the petitioner has a permanent need rather than a temporary need for workers. The petitioner then filed the current petition containing countervailing evidence to overcome the DOL's decision.

The acting 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 seasonal and temporary. The acting director's decision recommending the approval of the petition is now before the AAO for review.

In its final determination notice, dated August 4, 2008, the DOL stated that the employer, Benson Enterprises of New York, Inc., sought certification from October 1, 2008 through April 30, 2009. The DOL determined in reviewing the employer's past filing history, including the current certification application that the employer had submitted the same H-2B application for temporary labor certification from February 15, 2008 through December 15, 2008 and when taken together, it demonstrated a continuous need covering more than 400 calendar days. The DOL concluded that the employer's past and present filing activity demonstrates that the employer's need for the services to be performed is a permanent year-round need for services; not temporary.

The AAO determines upon review of the evidence contained in the record, that Benson Enterprises of New York, Inc. is a separate and distinct company from the petitioner, Benson Seasonal Services, Inc. Benson Enterprises of New York, Inc. is a landscaping company based in ██████ New York, that applied for and was granted temporary labor certification for landscape laborers from February 15, 2008 to December 15, 2008. The petitioner, Benson Seasonal Services, Inc., is a winter grounds maintenance company that applied for and was denied temporary certification for groundkeepers from October 1, 2008 to April 30, 2009.

The AAO finds that the temporary labor certifications were filed for two separate and distinct companies, each independently operating a seasonal business. The petitioner has been shown to have two distinct needs for the beneficiaries' services that should not be considered as a continuation of the previous duties or positions held. Moreover, the regulations do not prohibit common ownership and/or the filing for more than one distinct seasonal need in a calendar year. Additional evidence has been submitted to show that even though the companies are owned by the same person, they operate independently of each other and provide distinctly different services to its respective clients. The Vermont Service Center will issue the appropriate approval notice.

ORDER: The decision of the acting director is affirmed. The nonimmigrant visa petition is approved.