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U.S. Citizenship
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Services

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FILE: WAC 07 172 52162 Office: CALIFORNIA SERVICE CENTER Date: NOV 20 2007

IN RE: Petitioner: [Redacted]
Beneficiaries: [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.

for *Maryanne K. Sargeant*
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director of the California Service Center denied the nonimmigrant visa petition on July 6, 2007. On August 2, 2007 the service center returned to the petitioner the matters that it had submitted as an appeal, because the petitioner had used a superseded version of the Form I-290B (Notice of Appeal). On August 16, 2007, the petitioner resubmitted its appellate matters, this time with the proper Form I-290B, and the service center accepted them for processing. In accordance with the regulations at 8 C.F.R. §§ 103.3(a)(2)(i), 103.3(a)(2)(v)(B)(2), 103.5a(b), and 103.5(a)(1)(ii), the director adjudicated the matters as a motion to reopen, rather than an appeal, because she determined that they were filed after the period specified for the filing of an appeal but met the requirements of a motion to reopen.¹ Upon consideration of the record of proceedings as expanded by the documents filed on August 16, 2007, the director issued a decision recommending approval of the petition, and she certified the decision to the Administrative Appeals Office (AAO) for review as required by 8 C.F.R. § 214.2(h)(9)(iii)(B)(2)(ii). The director's decision will be affirmed, and the petition will be approved.

The petitioner provides landscaping services for commercial and residential clients. In order to newly employ the six named aliens as landscape laborers from May 28, 2007 to December 15, 2007, the petitioner filed this petition to classify them as H-2B nonimmigrant workers pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(ii)(b).

The Department of Labor (DOL) determined that a temporary labor certification by the Secretary of Labor could not be made because the petitioner had not established that the need for the beneficiaries' services is temporary.

Upon reopening the proceedings in order to consider the matters submitted in response to her decision to deny the petition, the director determined that sufficient countervailing evidence has been submitted to show that qualified persons in the United States are not available, that the DOL's employment policies have been observed, and that the need for the services to be performed is seasonal and temporary.

After review of the evidence contained in the record, the decision of the director is found to be correct. The California Service Center will issue the appropriate approval notice.

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

¹ That the director adjudicated as a motion the matters filed on August 16, 2007 is clear in the following language in the decision certified to the AAO:

[O]n August 16, 2007, the petitioner submitted an untimely appeal which meets the requirement of a motion to reopen. The appeal was treated as a motion under 8 C.F.R. [§] 103.3(a)(2)(v)(B)(2). . . .