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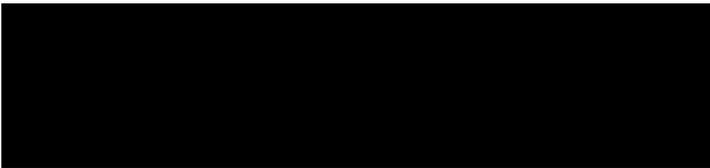
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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 21 2005

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:

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, Director
Administrative Appeals Office

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

The petitioner is in the business of placing seasonal workers. It filed the present H-2B petition to employ the beneficiaries as resort attendants at Colorado mountain resorts for the period March 15, 2005 to September 30, 2005. The petition seeks to change the beneficiaries' previously approved employment and extend their stay in the United States.

For the Department of Labor (DOL) temporary labor certification determination that Citizenship and Immigration Services (CIS) regulations require for H-2B petitions, the petitioner submitted a copy of the temporary labor certification that DOL had issued to it for 300 aliens to serve in resort attendant positions. At the time that it filed the present petition, the petitioner had already used that DOL labor certification as the basis for an approved H-2B petition for 300 unnamed beneficiaries [REDACTED]

The director denied the petition because he concluded that CIS regulations did not allow the petitioner to use the temporary labor certification that had been submitted in support of the previously approved petition. The director determined that the petitioner would have to either file a new H-2B petition for the 32 named aliens, with a new DOL determination on an application for temporary labor certification, or obtain approval from the relevant consular offices to substitute the named aliens for unnamed beneficiaries of the previously approved H-2B petition.

On appeal, the petitioner argues that the director misinterpreted the relevant regulations. As discussed below, the petitioner is correct, and the appeal will be sustained.

On October 27, 2004, DOL approved a temporary labor certification for the petitioner to employ 300 aliens as H-2B temporary resort attendants for the period December 1, 2004 through September 30, 2005. The petitioner submitted that temporary labor certification in conjunction with an H-2B visa petition that was subsequently approved for 300 unnamed beneficiaries in December 2004. [REDACTED] On March 15, 2005, the petitioner filed a copy of that temporary labor certification with the present H-2B petition, as the DOL determination required by the regulations.

The present petition, [REDACTED] is for named aliens to serve in 32 of the 300 resort attendant positions that were approved in the earlier petition for unnamed beneficiaries. In its March 12, 2005 letter filed with the Form I-129 in this case, the petitioner stated that it had employed only 31 persons for the 300 H-2B positions that CIS had approved in December 2004, in [REDACTED] and the petitioner requested that the 32 beneficiaries named in the present petition "be granted H-2B status to fill one of the vacant 269 positions remaining on the previously approved petition."

The record reflects that the 32 beneficiaries of the present petition were in the United States and in H-2B status on the date that the petition was filed. In order to extend these aliens' stays in the United States, the petitioner filed an H-2B petition on their behalf. See 8 C.F.R. § 214.2(h)(15)(i).

The petitioner is correct in asserting that the CIS regulations permit the petitioner's use of the temporary labor certification that had been used earlier to support the H-2B petition that CIS approved in December 2004 for 300 unnamed aliens to work as resort attendants. The record establishes that the aliens named in the present petition would fill 32 of 269 of the approved resort attendant positions that had not yet been filled, and that the period of employment specified in the present petition coincides with the time that remained on the temporary labor certification. The governing regulation, at 8 C.F.R. § 214.2(h)(15)(iii), states:

[I]f all of the beneficiaries covered by an H-2A or H-2B labor certification have not been identified at the time a petition is filed, multiple petitions naming subsequent beneficiaries may be filed at different times with a copy of the same labor certification. Each petition must reference all previously filed petitions for that labor certification.

The director was correct in noting that 8 C.F.R. § 214.2(h)(15)(iv) allows a petitioner to request visas from the appropriate consular offices in order to substitute named aliens for unnamed beneficiaries for which an H-2B petition had been approved. However, that regulation is designed for situations where the aliens are outside the United States. It was not required that the petitioner resort to this option, because the aliens who are the subject of this petition were already in status in the United States.

The petitioner has overcome the basis of the director's denial of the petition, and no other grounds for denial appear in the record. 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 sustained that burden.

ORDER: The director's decision of March 22, 2005 is withdrawn. The appeal is sustained. The petition is approved.