

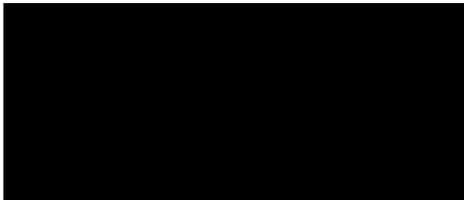
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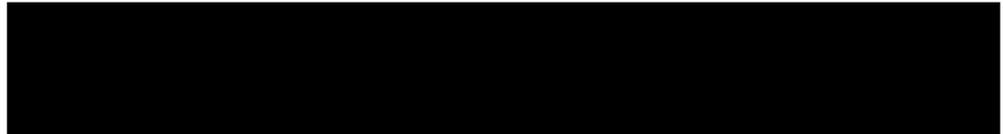


FILE: EAC 07 021 51745

Office: VERMONT SERVICE CENTER

Date: **AUG 06 2007**

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.

for Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a stone quarry company located in Hurricane, Utah. It desires to employ the beneficiaries as rock splitter laborers 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 January 15, 2007 to November 15, 2007. The Department of Labor (DOL) determined that the petitioner had submitted insufficient evidence for the issuance of a temporary labor certification by the Secretary of Labor. The acting director determined that the petitioner had not overcome the objections addressed in the DOL's decision and denied the petition.

On appeal, the petitioner states that it has complied with all of the procedural filing requirements mandated by the United States DOL and the United States Citizenship and Immigration Services (CIS). In addition, the petitioner submitted copies of the company's payroll summary from November 2004 through December 2004.

Upon review, the AAO finds that the I-129, Petition for a Nonimmigrant Worker (Form I-129) was filed on October 10, 2006. In his decision, the director stated that the petitioner filed for two labor certifications with overlapping dates of employment, and thus the temporary need appeared to be for most of the year except for 15 days. The director noted that the petitioner provided insufficient evidence to document a temporary need.

On appeal, the petitioner has overcome the concerns addressed in the director's and the DOL's decisions. Moreover, sufficient countervailing evidence has been submitted to show that qualified persons in the United States are not available, that the employment policies of the Department of Labor have been observed and that the petitioner's need for the beneficiaries' services is seasonal and temporary.

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 petition is approved.