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FILE: EAC 07 228 50059 Office: VERMONT SERVICE CENTER Date: **AUG 22 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the 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 director will be affirmed and the petition will be approved for the period of established need.

The petitioner operates a baking company in the city of New Orleans, Louisiana. The baking company is the largest producer of bread in the city of New Orleans and services the restaurants and hospitality industries, in the city and in some of the Greater New Orleans area. It desires to employ the beneficiaries as helpers and production workers for a period of six and one-half months. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be made because the petitioner had not provided sufficient evidence to establish that its need for the beneficiaries' services is temporary.

The 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 petitioner's need for the services to be performed is temporary. The director's decision is now before the AAO for review.

The regulations at 8 C.F.R. § 214.2(h)(9)(iii)(B)(2) states in pertinent part that :

(ii) Approval. In any case where the director decides that approval of the H-2B petition is warranted despite the issuance of a notice by the Secretary of Labor . . . that certification cannot be made, the approval shall be certified by the director to the Commissioner pursuant to 8 C.F.R. § 103.4. . . If approved, the petition is valid for the period of established need not to exceed one year. . . .

The petition indicates at Part 5, item 8 that the dates of intended employment are from July 18, 2007 until January 31, 2008. To substantiate its need for the intended dates of service, the petitioner provided a copy of its monthly payroll reports, for the 2005 and 2006 calendar years, for temporary and permanent workers, in the occupation of production workers. One of the reports show that permanent workers were employed throughout the 2005 calendar year excluding the month of September, however, no temporary workers were employed in 2005. For the 2006 calendar year, the report shows that permanent workers were employed throughout the year and that temporary workers were employed from May through December. Temporary workers were not employed by the petitioner from January through April of 2006.

After review of the documentary evidence contained in the record, the petition will be approved for the period of established need from May 2007 until December 2007. The petitioner has provided sufficient countervailing evidence to establish that the need for the beneficiaries' services is seasonal and temporary. The Vermont Service Center will issue the appropriate approval notice.

ORDER: The decision of the director is affirmed. The nonimmigrant visa petition is approved for the period of established need from May 1, 2007 until December 31, 2007.