

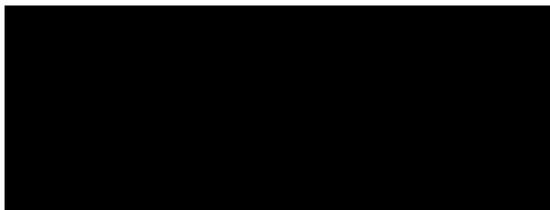
PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services



D 4

FILE: EAC 07 170 53382 Office: VERMONT SERVICE CENTER Date: **AUG 22 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:

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 is a landscaping nursery company. It desires to employ the beneficiaries as landscaping and groundskeeping laborers for ten months. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be made.

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 need for the services to be performed is temporary. The director recommended approving the instant petition for the period of established need from April 1, 2007 until December 31, 2007. 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 item 8 that the dates of intended employment are from April 1, 2007 until January 31, 2008. To substantiate its need for the intended dates of service, the petitioner provided a copy of its monthly net sales for the 2006 calendar year. The report shows that the petitioner's net sales in 2006 went from \$51,996 in January to \$462,048 in March, to \$1,006,649 in April and increased to \$1,277,987 in May with monthly sales decreasing thereafter. The petitioner states that the seasonal labor is not needed from February 1st through March 31st.

After review of the documentary evidence contained in the record, the petition will be approved for the period of established need from April 2007 until December 2007. The petitioner has provided sufficient countervailing evidence to establish that the recruitment efforts complied with the DOL requirements and 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 April 1, 2007 until December 31, 2007.