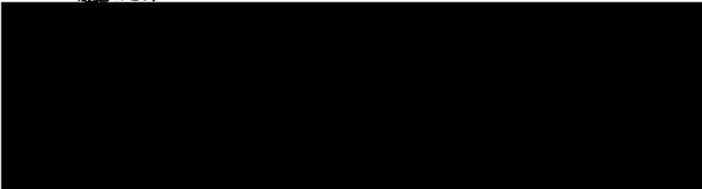




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy



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FILE: EAC 07 073 51868 Office: VERMONT SERVICE CENTER Date: **AUG 29 2007**

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

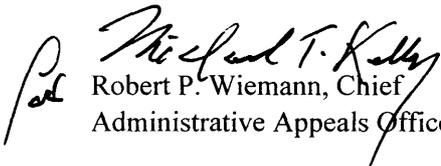
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

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). Upon review, the AAO withdrew the director's decision and remanded it to the director for further action and consideration. The director has now issued a new decision whereby the director denied the petition and certified it to the AAO for review. The director's decision to deny the petition will be withdrawn and the petition will be approved for 69 of the 71 workers initially named in the petition, that is, for all the named workers except [REDACTED] and [REDACTED]

The petitioner engages in the assembly of structural steel plates, pressure and storage vessels and sheet metal structures for a number of diverse industries. The petitioner also constructs water tanks and assembles conduits and other component parts for air conditioning systems that will be used for oil rig platforms. It desires to employ the beneficiaries as welders for ten months. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be made due to the petitioner's inconsistencies regarding the date of need. The petitioner's letter dated October 23, 2006 reflects a start date of March, while Form ETA 750 at item 18 and the Petition for a Nonimmigrant Worker (Form I-129) indicate a start date of February 19, 2007.

The director determined that sufficient countervailing evidence had been submitted to overcome the objections of the DOL, and approved the petition. The AAO agreed with the director that the petitioner had established its date of need but upon further review, the AAO found that the petitioner had not established that its need for the beneficiaries' services was temporary. Therefore, the AAO withdrew the director's decision and remanded the case to the director for further action. Upon further consideration, the director denied the petition and certified his decision to the AAO for review.

On notice of certification, the petitioner presented additional evidence for consideration. Therefore, the record is considered complete.

Upon careful review of the entire record of proceeding, the AAO finds that the evidence of record does not support the director's decision to deny the petition. The petitioner's 2005 month to month sales statistics report shows an increase in sales from February 15-28 (\$1,243,011.07) to \$6,983,040.47 in July and finally decreasing to \$1,985,212.75 in December. The petitioner's 2006 month to month sales statistics report shows an increase in sales from February 20-28 (\$4,366,470.00) to \$19,913,792.00 in May and finally decreasing to \$6,200,000.00 in December. The Employer's Quarterly Federal Tax Return shows an increase in the number of employees from 556 in the first quarter to 648 employees in the third quarter. Further, subsequent to the director's decision and at the AAO's request, the petitioner withdrew [REDACTED] and [REDACTED] from consideration for the benefits of the petition.

After review of the evidence contained in the record, the decision of the director is found to be correct. The petitioner has provided sufficient evidence to establish that the need for the beneficiaries' services is peakload and temporary. The Vermont Service Center will issue the appropriate approval notice.

ORDER: The director's decision of May 25, 2007 is withdrawn. The nonimmigrant visa petition is approved for all the workers originally named in the petition except [REDACTED] and [REDACTED] who were withdrawn from the petition.