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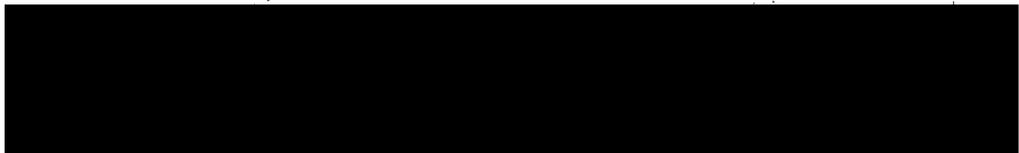
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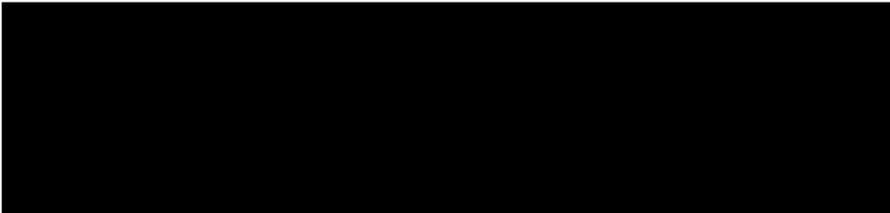
FILE: EAC 07 108 51193 Office: VERMONT SERVICE CENTER Date: DEC 20 2007

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:



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. In a subsequent appeal, that was treated by the director as a motion to reopen, the director approved the petition and certified its decision 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 although the matter is moot due to the passage of time.

The petitioner operates a hotel, restaurant and catering service in St. Ignace, Michigan. It desires to employ the beneficiaries as maids 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) from April 1, 2007 to November 10, 2007. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be made.

The director agreed with the DOL's determination and denied the petition on May 9, 2007. On June 29, 2007, counsel on behalf of the petitioner filed an appeal. The appeal was not received within the allotted 33-day time period which is the time period an appeal must be filed to be considered timely. However, per regulation, the appeal was treated by the director as a motion to reopen since it met such requirements. Upon review, 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 approved the petition on December 11, 2007 and certified his decision to the AAO for review.

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.

The regulation at 8 C.F.R. § 214.2(h)(9)(ii)(B) states that, if a petition is approved after the date the petitioner indicates that the service will begin, the approved petition and approval notice should show a validity period commencing with the date of approval and ending with the date requested by the petitioner.

It is noted that the petitioner requested the beneficiaries' services from April 1, 2007 to November 10, 2007. Therefore, the matter is moot as the period of requested employment has already expired.

ORDER: The director's decision of December 11, 2007 is affirmed although the matter is moot due to the passage of time because the period of intended employment has already expired.