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U.S. Citizenship
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FILE: EAC 07 195 51660 Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiaries:



JUL 13 2007

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 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 bakery. It desires to employ the beneficiaries as helper-production workers from April 1, 2007 to January 31, 2008. 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 Department of Labor have been observed and that the need for the services to be performed is temporary. The director's recommendation to approve the instant petition 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 April 1, 2007 to January 31, 2008. To substantiate its need for the intended dates of service, the petitioner provided a table related to the number of temporary and permanent employees, and federal tax records.

The AAO finds that there is a peakload need for the services to be performed. The aforementioned records reflect a peakload need from May 1, 2007 to December 31, 2007.

After review of the documentary evidence contained in the record, the petition will be approved for the period of established need. The petitioner has provided sufficient evidence to establish that the need for the beneficiaries' services is from May 1, 2007 to December 31, 2007 and that there is a peakload need. 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 to December 31, 2007.