

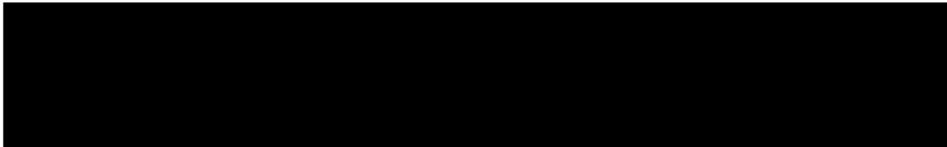
PUBLIC COPY



U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

84



FILE: EAC 07 190 51384 Office: VERMONT SERVICE CENTER

Date: JUL 13 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.

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 landscaping company. The petitioner desires to employ the beneficiaries as landscape laborers from June 1, 2007 until November 30, 2007. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be made because the petitioner did not provide adequate documentation to establish a peak load need.

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 there is a temporary need for the services to be performed. 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 June 1, 2007 until November 30, 2007. To substantiate its need for the intended dates of service, the petitioner provided a table related to the number of permanent and temporary landscape laborers in 2006, state tax returns from 2006 and payroll records from 2006.

Based on the record, the AAO finds that there is a peakload need for the services to be performed from June 1, 2007 until October 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 June 1, 2007 until October 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 June 1, 2007 until October 31, 2007.