

**PUBLIC COPY**

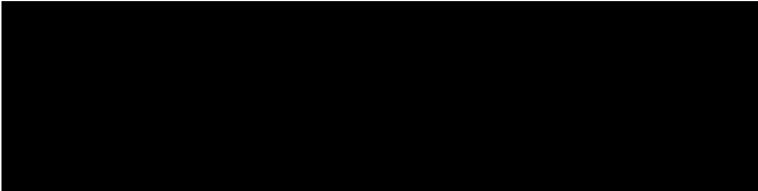
U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. 3000  
Washington, DC 20529

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U.S. Citizenship  
and Immigration  
Services

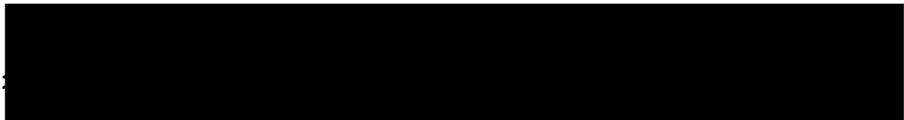
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FILE: EAC 07 153 51158 Office: VERMONT SERVICE CENTER

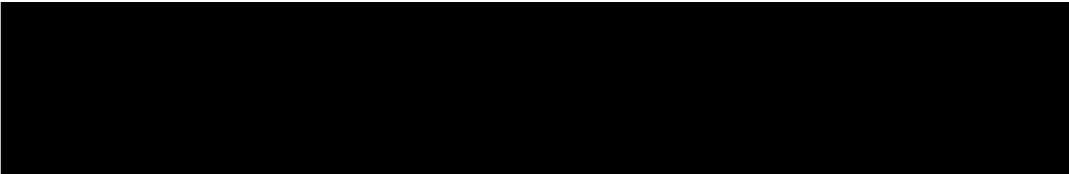
Date: JUL 31 2007

IN RE: Petitioner:  
Beneficiaries:



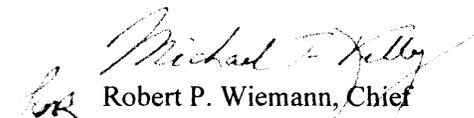
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

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.

  
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 restaurant. It desires to employ the beneficiaries as waitstaff for nine 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'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 item 8 that the dates of intended employment are from April 1, 2007 until December 31, 2007. To substantiate its need for the intended dates of service, the petitioner provided a copy of its monthly payroll reports for the calendar years 2005 and 2006 for permanent and temporary workers. The report shows that no permanent and temporary workers were employed throughout the 2005 calendar year. For the 2006 calendar year, the report shows the employment of permanent workers throughout the 2006 calendar year and the employment of temporary workers from May to November of 2006.

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 2007 until November 2007 and that the need is peakload 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 May 1, 2007 until November 30, 2007.