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U.S. Citizenship
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Services

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NOV 07 2007

FILE: EAC 07 108 51201 Office: VERMONT SERVICE CENTER Date:

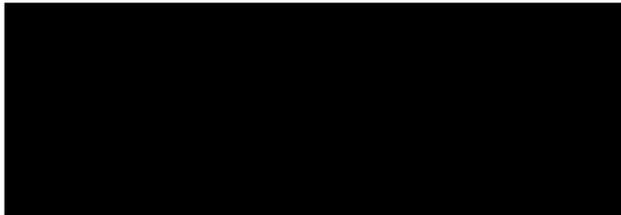
IN RE: Petitioner:

Beneficiaries:



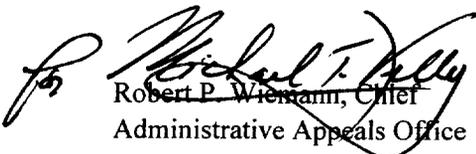
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

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 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.

The petitioner operates a hotel, restaurant and catering service in [REDACTED]. It desires to employ the beneficiaries as kitchen helpers 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 15, 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 October 30, 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 seasonal 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.