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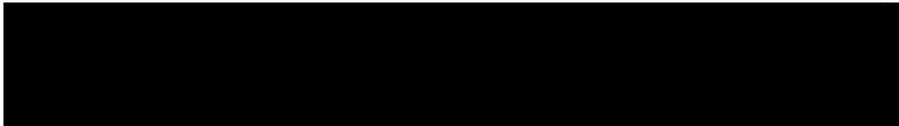
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FILE: EAC 07 192 51956 Office: VERMONT SERVICE CENTER Date: NOV 07 2007

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.


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 director's decision will be affirmed and the petition will be approved for the period of established need although the matter is moot due to the passage of time.

The petitioner is a seasonal restaurant. It desires to employ the beneficiaries as kitchen workers pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(ii)(b) from April 15, 2007 to November 15, 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 that its need for the beneficiaries' services is seasonal.

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 decision 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 15, 2007 until November 15, 2007. To substantiate its need for the intended dates of service, the petitioner provided a copy of its 2006 Employer's Quarterly Federal Tax Return (Form 941). The tax return reveals that the petitioner did not employ any workers and that no wages, tips or other compensation were paid out for the 1st quarter (January through March) and the 4th quarter (October through December) of 2006. The tax return also reveals that the petitioner employed 18 workers during the 2nd quarter (April through June) and 13 workers during the 3rd quarter (July through September) of 2006.

After review of the documentary evidence contained in the record, the petitioner has provided sufficient countervailing evidence to establish that its need for the beneficiaries' services is from April 2007 through September 2007. The petition will be approved for the period of established need. 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 15, 2007 to November 15, 2007. However, the documentation provided only established a seasonal need for the beneficiaries' services from April 15, 2007 through September 30, 2007. The petition will be approved for the period of established need although the matter is moot due to the passage of time.

ORDER: The decision of the director, dated October 30, 2007, is affirmed. The nonimmigrant visa petition is approved for the period of established need from April 15, 2007 until September 30, 2007, although the matter is moot due to the passage of time.