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U.S. Citizenship
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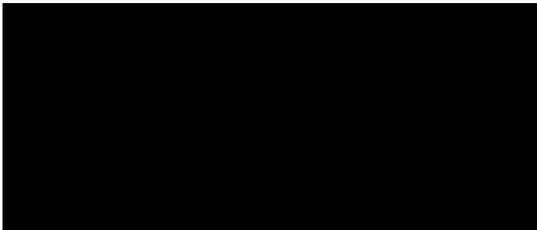


FILE: EAC 07 232 52897 Office: VERMONT SERVICE CENTER Date: SEP 18 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

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 is a law firm 95 percent of whose clients are Koreans or employers having a business relationship with Korea. It desires to have the beneficiary again approved for H-2B classification, this time for the period November 1, 2007 to September 30, 2008 (see the dates of intended employment specified at item 8 of Part 5 of the Form I-129 (Petition for a Nonimmigrant Worker)).¹ The petitioner explains that the beneficiary, who was admitted into the United States on April 7, 2007 until June 30, 2007 to work for the petitioner, is needed to continue with the office's project of organizing and digitizing clients' files in which most of the documents are originally written in Korean. The petitioner states that only one-third of more than its 450 cases was completed, and estimates eleven months to complete the project. Upon completion of this project, the petitioner states that its clients will be able to track their case status online anytime and anywhere in the world. The Department of Labor (DOL) determined that a temporary labor 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 regulation 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 maximum period of employment that Citizenship and Immigration Services (CIS) may approve in a particular H-2B petition is the period that the related application to DOL for temporary labor certification (Application for Alien Employment Certification (Form ETA 750)) states as the period of intended employment. See 8 C.F.R. §§ 214.2(h)(6)(iii)(A) and (C) (identifying the filing of an application for temporary labor certification and DOL's decision thereupon as conditions precedent to filing an H-2B petition); 8 C.F.R. § 214.2(h)(6)(iii)(E) (requiring that the Form I-129 for an H-2B petition be accompanied by DOL's labor certification determination and related documents); 8 C.F.R. § 214.2(h)(6)(iv)(E) (requiring the H-2B petitioner to submit countervailing evidence that addresses each DOL reason for not granting the temporary labor certification); see also 8 C.F.R. § 214.2(h)(9)(iii)(B) (indicating that the approval period of an H-2B petition is

¹ The record of proceeding indicates that the present petition was filed on July 27, 2007, a date after the June 30, 2007 expiration of the beneficiary's previously approved H-2B classification. According to item 2 of Part 3 of the Form I-129, the beneficiary's status at the time the present petition was filed was "F1 pending."

dependent upon the content of the application for labor certification). Further, the regulation at 20 C.F.R. § 655.206(b)(1) states in pertinent parts that temporary labor certifications shall be considered subject to the conditions and assurances made during the application process and “shall be limited to the employer’s specific job opportunities.” As related in the job advertisement published as part of the temporary labor certification application in this case, the specific job opportunity extends only to June 30, 2008.

In the present case, item 18 of the temporary labor certification application specified July 9, 2007 to June 30, 2008 as the exact dates that the petitioner expects to employ the beneficiary. The petitioner’s job advertisement also specified this as the period of offered employment. However, item 8 at Part 5 of the Form I-129 specifies different dates for the period of intended employment, namely, November 1, 2007 to September 30, 2008. For the reasons discussed above, this petition cannot be approved beyond the period of employment specified in the application for temporary labor certification and the related job advertisement, that is, June 30, 2008.

After review of the documentary evidence contained in the record, the petition will be approved for the period of established need, namely, November 1, 2007 until June 30, 2008. This is that portion of the Form I-129 period of intended employment that falls within the period of employment specified in the petitioner’s application for temporary labor certification. The petitioner has provided sufficient evidence to establish the need for the beneficiary’s services for this period of November 1, 2007 to June 30, 2008, and that the need is a one-time occurrence and temporary. The Vermont Service Center will issue the appropriate approval notice.

Please note the possibility that the beneficiary may not be eligible for a change of status to H-2B temporary worker as her current H-2B status expired on June 30, 2007.

ORDER: The decision of the director is affirmed. The nonimmigrant visa petition is approved for the period of established need from November 1, 2007 until June 30, 2008.