

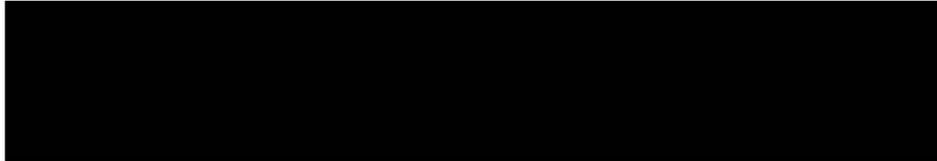
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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: EAC 08 207 51113 Office: VERMONT SERVICE CENTER Date: **OCT 21 2008**

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:

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 recommended to be approved by the Acting 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 acting director will be affirmed and the petition will be approved.²

The petitioner operates a landscape design and installations company. It desires to extend the stay of the beneficiaries as landscape laborers pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(H)(ii)(b) from September 15, 2008 to July 15, 2009. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be made because the dates of need on the current and previous certification applications filed by the petitioner indicate that temporary workers have been needed continuously for the occupation of landscape laborers since January 2008. The DOL determined that the petitioner's dates of need (January 14, 2008 through November 13, 2008) on the previous temporary labor certification application and the dates of need (September 15, 2008 through July 15, 2009) on the current temporary labor certification application establish a pattern demonstrating that the nature of the petitioner's need for services or labor to be performed is permanent; not temporary.

The acting 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 petitioner's need for the services to be performed is temporary.

After review of the evidence contained in the record, the decision of the director is found to be correct. The petitioner explains that its business plan changed this year from landscape maintenance to primarily landscape design and installation because the installation part of its business is the most profitable. The petitioner contends that the change in its operations requires a change in its dates of temporary need. The petitioner asserts that as it completes its maintenance contracts, the aggregated dates of need for which the petitioner has applied for and been granted temporary labor certification previously will overlap with the currently requested period of need. The petitioner states that after the summer of 2008, it will only require temporary workers from September 15, 2008 through July 15, 2009. The petitioner has provided sufficient evidence to establish that the need for the beneficiaries' services is peakload and temporary. The Vermont Service Center will issue the appropriate approval notice.

ORDER: The decision of the acting director is affirmed. The nonimmigrant visa petition is approved.

The record of proceeding contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by [REDACTED] of Action Visa Assistance. At block #4, Ms. [REDACTED] states, "I am the authorized representative for [the petitioner]. . . . [REDACTED] is not, however, an attorney or accredited representative and is, therefore, not authorized to act on the petitioner's behalf. Accordingly, the AAO shall consider the petitioner self-represented.