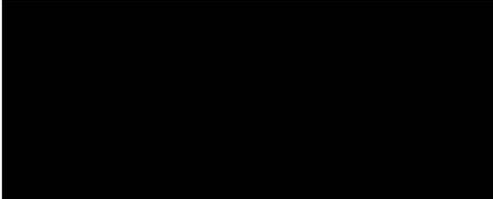


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FILE: EAC 06 151 53175 Office: VERMONT SERVICE CENTER Date: FEB 29 2008

IN RE: Petitioner: [Redacted]
Beneficiaries: [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: On May 16, 2006, a decision by the Director, Vermont Service Center (VSC) recommending approval of the H-2B petition was certified to the Administrative Appeals Office (AAO) for review, as required by 8 C.F.R. § 214.2(h)(9)(iii)(B)(2)(ii). On May 19, 2006, the AAO withdrew the director's decision and remanded the petition for the director to issue a request for additional evidence (RFE) and to certify a new decision to the AAO after consideration of the petitioner's response to the RFE. The director issued an RFE on June 13, 2007 that allowed the petitioner to respond by September 8, 2007. On February 14, 2008, the director denied the petition and certified the matter to the AAO for review. That certification is the subject of this decision.

As a preliminary matter, the AAO notes that the petition is moot, as the period of employment sought in the petition - April 12, 2006 to December 20, 2006 – has passed.

As discussed below, the evidence of record supports the director's recommendation to deny the petition. Accordingly, the certified decision will be affirmed and the petition will be denied, although the petition is moot due to the passage of time.

The Form I-129, Petition for a Nonimmigrant Worker, was filed in order to classify four (4) named beneficiaries as H-2B stable attendants from April 12, 2006 to December 20, 2006. In its previous decision, the AAO found that the record of proceeding failed to establish (1) that the petitioner had adequately tested the labor market in the Bridgehampton, New York area, and (2) that the services or labor are traditionally tied to a season of the year by an event or pattern and is of a recurring nature. *See* 8 C.F.R. § 214.2(h)(6)(ii)(B)(2).

The AAO's decision dated May 19, 2006 notified the petitioner of material evidentiary deficiencies that precluded approval of the petition. The AAO's decision also instructed the director to issue a request for evidence (RFE) to afford the petitioner an opportunity to address evidentiary deficiencies that precluded approval of the petition.

On June 13, 2007, the VSC issued an RFE in accordance with the AAO's order of May 19, 2006. The RFE specified September 8, 2007 as the last day to respond to the request for evidence. The director denied the petition and certified it to the AAO for review. The director's certification decision notes that the petitioner did not respond to the RFE.

The AAO's previous decision and the RFE issued in response to it notified the petitioner of material evidentiary deficiencies in the record of proceedings that precluded approval of the petition. The RFE requested particular types of documentary evidence to address the specified evidentiary deficiencies, and it noted that a response must be received by the VSC on or before September 8, 2007. As the petitioner did not respond to the RFE within the time allotted by the VSC, the director's certification decision recommends that the petition be denied.

The AAO finds that the petition must be denied on two separate and independent grounds. First, the lack of the evidence requested in the RFE leaves the evidence of record insufficient for approval of the petition. Therefore, the petition will be denied on the merits. Second, the failure to respond to the RFE constitutes

abandonment of the petition, in accordance with 8 C.F.R. § 103.2(b)(13). Accordingly, the director's decision will be affirmed, and the petition will be denied although it is moot due to the passage of time.¹

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The director's decision dated February 14, 2008 is affirmed. The petition is denied, although it is moot due to the passage of time.

¹ The AAO notes that, as stated in the director's Notice of Certification, the petitioner retains the right to file with the AAO matters in response to the certification, provided that they are received by the AAO within 33 days of February 14, 2008, which is the date that the certification was issued.