



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF N-M-F- LLC

DATE: DEC. 29, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, which operates an organic fruit and vegetable farm, seeks to temporarily employ the Beneficiaries as “farm workers, laborers – crop” under the H-2A nonimmigrant classification. *See* Immigration and Nationality Act § 101(a)(15)(H)(ii)(a), 8 U.S.C. § 1101(a)(15)(H)(ii)(a). The Director, California Service Center, denied the petition. The matter is now before us on appeal. The decision of the Director will be withdrawn. The matter will be remanded to the Director for further proceedings.

Based upon our review of the entire record of proceedings, we conclude that the Petitioner has overcome the grounds for denial that the Director specified in her decision, that is, her conclusion that the nature of the employment proposed for the Beneficiaries was neither “temporary” nor “seasonal” as those terms are defined for H-2A classification at 8 C.F.R. § 214.2(h)(5)(iv)(A).<sup>1</sup> Therefore, we withdraw the Director’s decision. However, the petition may not be approved at this time, because the Director has not yet made a determination as to whether it would be in the U.S. interest for the petition to be approved on behalf of the Beneficiaries specified in the petition. Accordingly, we remand the matter to the Director for such determination.

The Beneficiaries are nationals of Egypt, a country which was not named to the Department of Homeland Security’s list of countries whose nationals were eligible to participate in the H-2A program for the period sought in the petition.<sup>2</sup> According to the regulations at 8 C.F.R.

<sup>1</sup> The regulation at 8 C.F.R. § 214.2(h)(5)(iv)(A), *Eligibility requirements*, states:

An H-2A petitioner must establish that the employment proposed in the [temporary labor] certification is of [(A)] a temporary or [(B)] seasonal nature. Employment is of a seasonal nature where it is [(1)] tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and [(2)] requires labor levels far above those necessary for ongoing operations. Employment is of a temporary nature where the employer’s need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than one year.

<sup>2</sup> The Secretary of the Department of Homeland Security (DHS) designates the eligible counties on an annual basis, with the concurrence of the Secretary of State. The Secretary of DHS annually publishes a list of those countries in the Federal Register. The list is described at 8 C.F.R. § 214.2(h)(5)(i)(F)(1)(i). The *Federal Register’s* notice of the list of 68 countries approved for the year 2015 does not include Egypt. *See* 79 Fed. Reg. 74735 (Dec. 16, 2014).

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§§ 214.2(h)(5)(i)(F)(I)(i) and (h)(5)(i)(F)(I)(ii), a Director may not approve an otherwise approvable H-2A petition for beneficiaries who are nationals of countries not on the eligible countries list unless he or she also determines that approval would be “in the U.S. interest,” after taking into account relevant factors as directed at 8 C.F.R. § 214.2(h)(5)(i)(F)(I)(ii).

The Director will approve the petition if she determines that approval would be in the U.S. interest; if the Director determines that approval would not be in the U.S. interest, she will certify her decision to us for review.

**ORDER:** The decision of the Director, California Service Center, is withdrawn. The matter is remanded to the Director, California Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of N-M-F- LLC*, ID# 15508 (AAO Dec. 29, 2015)