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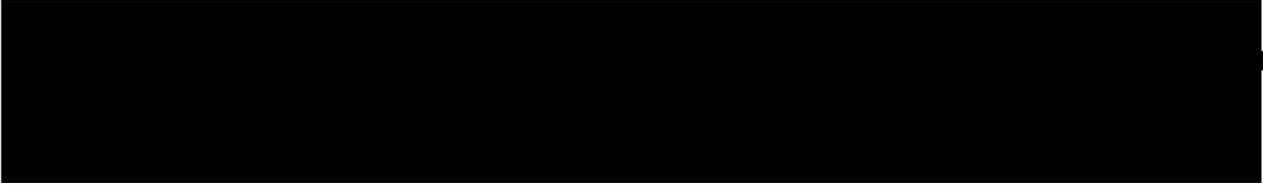
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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JUL 26 2007

FILE: EAC 07 180 52724 Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:



Beneficiaries:



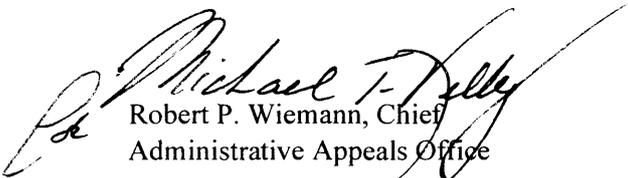
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

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 decision of the director will be affirmed and the petition will be approved for the period of established need and for all the workers named in the petition except Renee West, who has been withdrawn from the petition.

The petitioner is a hospitality staffing agency. It desires to employ the beneficiaries as dishwashers for eight months. The beneficiaries will be performing services for the Treasure Ship Restaurant in Panama City Beach, Florida. The Department of Labor (DOL) determined that a temporary 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 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 I-129, Petition for a Nonimmigrant Worker (Form I-129) indicates at Part 5, item 8 that the dates of intended employment are from March 10, 2007 until November 10, 2007. To substantiate its need for the intended dates of service, the petitioner provided a copy of its monthly payroll report for the calendar year 2006 for permanent and contract kitchen workers. The term kitchen workers in this report include cooks, pantry, prep and dishwashers. The report shows that no workers were temporarily employed by the petitioner from January through February and November through December of 2006. The report also shows that workers were temporarily employed by the petitioner from March through October of 2006.

Subsequent to the director's decision and at the AAO's request, the petitioner withdrew Renee West from consideration for the benefits of this petition, thereby reducing the total number of named beneficiaries from 22 to 21.

After review of the documentary evidence contained in the record, the petition will be approved for the period of established need. The AAO finds that the petitioner has provided sufficient evidence to establish that the need for the beneficiaries' services is from March 10, 2007 through October 2007 and that the need is seasonal and temporary. The Vermont Service Center will issue the appropriate approval notices for the following beneficiaries who are certified in the Form I-129 petition (H-2B Returning Worker Attestation) as being returning workers:



[REDACTED] and [REDACTED]

ORDER: The decision of the director is affirmed. The nonimmigrant visa petition is approved for the period of established need from March 10, 2007 until October 31, 2007 and for all the workers initially named in the petition except [REDACTED]