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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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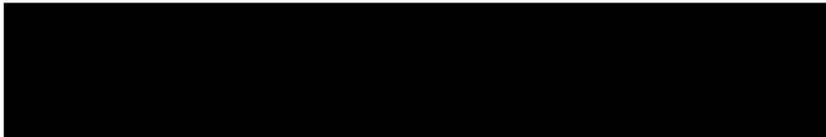
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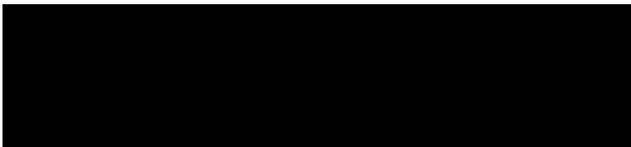
FILE: EAC 09 013 50448 Office: VERMONT SERVICE CENTER Date:

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:



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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. Although the director's decision will be withdrawn, the appeal will be dismissed as moot due to the passage of time.

The petitioner is engaged in pallet repair and reconditioning, and it desires to employ the beneficiaries as pallet assemblers pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(ii)(b) for the period from April 1, 2009 until August 15, 2009. The Department of Labor (DOL) determined that the petitioner had submitted insufficient evidence for the issuance of a temporary labor certification by the Secretary of Labor.

On November 25, 2008, the director denied the petition concluding that the petitioner failed to establish that the need for the workers is temporary. The director noted that the petitioner stated it had a labor shortage but it failed to show when the labor shortage will end, if ever.

On appeal, counsel for the petitioner explained that since 2001, the petitioner obtained H-2B temporary workers for its seasonal need running from February 1 through December 1. Counsel also noted that in 2007, the petitioner was unable to obtain all of the requested temporary workers because the H-2B cap was reached. In 2008, the petitioner requested a new time period for the temporary workers and DOL denied the request for a temporary labor certification. Counsel contends that due to its inability to bring in H-2B workers in 2007, the company loss clients and had a drop in sales. Thus, the request for H-2B workers is a one-time occurrence to help the company get back on track and eventually return to its regular seasonal need of February through December.

The petitioner stated its temporary need for the beneficiaries in its affidavit as follows:

14. The situation described here is temporary. As soon as I can restore a normal seasonal/peakload work force [the petitioner] can resume its normal season that existed in the years 2001 through 2007 (February through December). At the present time we have a temporary need for workers for November 15, 2008 to August 15, 2009 so that we can service the \$1 million a month in seasonal/peakload sales that [the petitioner] has been unable to service since March of 2008 when the H2B workers left the Jermyn and Harrisburg facilities.

The totality of evidence in the record of proceeding, including the countervailing evidence submitted to overcome the basis cited by DOL for its denial of the temporary labor certification, establishes that the petitioner's claimed need for pallet assemblers is a temporary need within the meaning of the regulations governing H-2B petitions.

It is noted that the petitioner requested the beneficiary's services from April 1, 2009 until August 15, 2009. Therefore, the period of requested employment has passed.

On appeal, the petitioner has overcome the concerns addressed in the director's decision. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has met that burden.

ORDER: The appeal is dismissed as moot due to the passage of time.