



U.S. Citizenship
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AUG 06 2007

FILE: EAC 07 066 51961 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiaries:



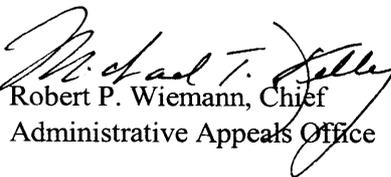
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

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.

for 
Robert P. Wiemann, 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. The appeal will be sustained and the petition will be approved for all the workers named in the petition except Anselm Ortiz, whom the petitioner withdrew from the petition.

The petitioner is a landscape/nursery company in Mexia, Texas. It desires to employ the beneficiaries as landscape/nursery laborers 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 February 15, 2007 to December 15, 2007. 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. The acting director determined that the petitioner had not overcome the objections addressed in the DOL's decision and denied the petition.

On appeal, the petitioner states that it has complied with all of the procedural filing requirements mandated by the United States DOL and the United States Citizenship and Immigration Services (CIS). In addition, the petitioner submitted eight letters from companies, dated in January and February 2007, indicating that these companies have been doing business with the petitioner during the past year and will continue to do business with it throughout 2007. The petitioner also submitted several invoices, dated from March 2006 to December 2006, indicating the petitioner's activity and sales for these months.

Upon review, the AAO finds that the I-129, Petition for a Nonimmigrant Worker (Form I-129) was filed on January 5, 2007. In his decision, the director stated that the petitioner submitted documentation to evidence it was doing business in the prior season, but that as the evidence was only for December 2006 through the first half of January 2007, it was insufficient to document that the seasonal need will continue through the requested period of employment.

On appeal, the petitioner has overcome the concerns addressed in the director's and the DOL's decisions. Moreover, sufficient countervailing evidence has been submitted to show that qualified persons in the United States are not available, that the employment policies of the Department of Labor have been observed and that the petitioner's need for the beneficiaries' services is seasonal and temporary.

During the pendency of the appeal, the AAO received a withdrawal of one named worker identified in the petition ([REDACTED]), thus reducing the total number of workers in the petition to 12.

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 sustained and the petition is approved for 12 named workers, that is, for all the workers named in the petition except [REDACTED] whom the petitioner withdrew from the petition.