

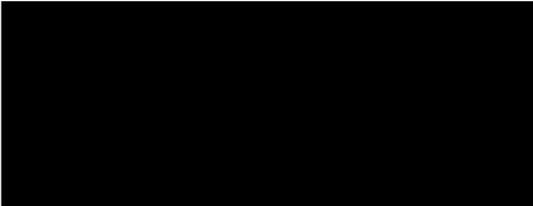
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U.S. Citizenship
and Immigration
Services

D3



FILE: EAC 07 150 55504 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiaries:



JUL 26 2007

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 Michael T. Kelly
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.

The petitioner is a landscape contractor. It desires to employ the beneficiaries as landscape laborers for nine and one-half months. 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 petition indicates at item 8 that the dates of intended employment are from February 15, 2007 until December 1, 2007. To substantiate its need for the intended dates of service, the petitioner provided a copy of its monthly payroll reports for the calendar years 2005 and 2006 for permanent and temporary workers. The report shows that permanent and temporary workers are employed throughout the year. The reports also show an increase in the number of temporary workers from March to September of 2005 and 2006.

After review of the documentary evidence contained in the record, the petition will be approved for the period of established need. The petitioner has provided sufficient evidence to establish that the need for the beneficiaries' services is from March 2007 until September 2007 and that the need is seasonal and temporary. The Vermont Service Center will issue the appropriate approval notice.

ORDER: The decision of the director is affirmed. The nonimmigrant visa petition is approved for the period of established need from March 1, 2007 until September 30, 2007.