

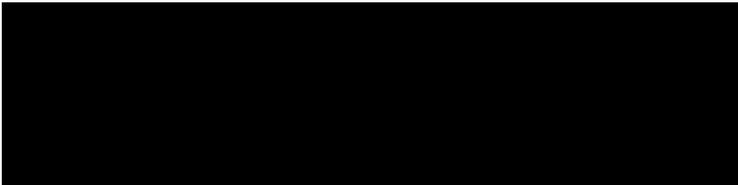
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U.S. Citizenship
and Immigration
Services

D3



FILE: EAC 06 158 53874 Office: VERMONT SERVICE CENTER

Date: JUL 26 2007

IN RE: Petitioner:
Beneficiaries:



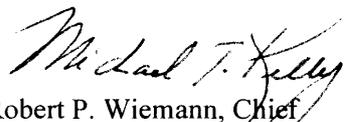
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

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 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). Upon review, the AAO found that the decision of the director should be withdrawn and the matter remanded to the director for further action and consideration. Thereafter, the director entered another decision that it certified to the AAO for review as required by regulation. On May 19, 2006, the AAO remanded the matter to the director for further action and consideration. The director has now entered a new decision which is before the AAO for review as required by regulation. The director's decision will be affirmed and the petition will be approved although the matter is moot due to the passage of time.

The petitioner operates a grocery store located in Montauk, on the east end of Long Island. It seeks to employ the beneficiaries as cook helpers from April 17, 2006 until December 20, 2006. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be made because the employer failed to adequately test the labor market in the Montauk, New York area. The DOL stated that the employer is required to provide the State Employment Security Agency the tearsheets from a publication in which the advertisement appeared and written results of all recruitment which must identify each recruitment source by name, address, and telephone number and provide resumes (if submitted to the employer) of each United States worker who applied for the job. The employer must also explain the lawful, job-related reasons for not hiring each United States worker.

The director determined that sufficient countervailing evidence has been submitted to overcome the objections of the DOL, and approved the petition. Upon review, the AAO withdrew the director's decision and remanded the case to the director for further action. The director's second decision again was remanded to the director for further action and consideration. The director has now made a new decision that has been certified to the AAO for review. Upon review, the AAO concurs with the director's decision to approve the petition.

The record of proceeding contains the tearsheets from "Newsday" as evidence of proper advertising in this matter. Further, in response to the director's request for additional evidence, the petitioner states that there were no responses from any source. The petitioner had no applicants that applied for the proffered position. Therefore, the petitioner complied with the DOL regulations and the petition will be approved.

ORDER: The decision of the director, dated July 12, 2007, is affirmed. The petition is approved although the matter is moot due to passage of time.