

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D3



FILE: EAC 08 006 53665 Office: VERMONT SERVICE CENTER Date:

JUN 02 2008

IN RE: Petitioner:
Beneficiaries:



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

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
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. The petition will be approved.

The petitioner is in the farming business. It desires to continue to employ the beneficiaries as farm workers from August 12, 2007 to May 31, 2008. The beneficiaries will be performing services for the petitioner at its farm in Fellamere, Florida. The director determined that the petitioner did not provide the evidence required by the regulation at 8 C.F.R. § 214.2(h)(5)(ix) on substituting for H-2B workers whose employment had been terminated early.

On appeal, the petitioner states that the Citizenship and Immigration Services (CIS) case examiner did not understand the petitioner's request. The petitioner states that it is trying to transfer 12 H-2A workers, who are currently employed at its West Virginia/Maryland farm back to its farm in Florida and extend their period of stay as H-2A workers.

Upon careful review of the entire record of proceeding, the AAO disagrees with the director's finding. Therefore, the AAO will sustain the appeal.

The regulation at 8 C.F.R. § 214.2(h)(5) states in pertinent part:

(ix) Substitution of beneficiaries after admission. An H-2A petition may be filed to replace H-2A workers whose employment was terminated early. The petition must be filed with a copy of the certification document, a copy of the approval notice covering the workers for which replacements are sought, and other evidence required by paragraph (h)(5)(i)(D) of this section. It must also be filed with a statement giving each terminated worker's name, date and country of birth, termination date, and evidence the worker has departed the United States. A petition for a replacement may not be approved where the requirements of paragraph (h)(5)(vi) of this section have not been met. . . .

The Petition for a Nonimmigrant Worker (Form I-129) was filed on October 5, 2007 to transfer 12 named H-2A farm workers from the petitioner's West Virginia/Maryland farm to the petitioner's farm in Fellamere, Florida. The petitioner is hoping to utilize the approved labor certification filed with its petition, EAC-07-214-53087, that was certified for 180 farm workers for the period August 12, 2007 to May 31, 2008. The director denied the petition solely because the petitioner did not provide the evidence required by the regulation at 8 C.F.R. § 214.2(h)(5)(ix) on substituting for H-2B workers whose employment had been terminated early. On appeal, counsel has demonstrated that the regulation is not relevant to this petition, as the petitioner is not attempting to substitute for terminated workers.

The AAO finds that the petitioner is requesting to transfer and extend the stay of 12 H-2A farm workers, who were admitted under a previously approved petition, EAC-07-109-53369, by utilizing the labor certification filed with its petition, EAC-07-214-53087, as the petitioner did not utilize all of its 180 visa allocations. The AAO further finds that the petitioner has satisfied all of the H-2A regulatory requirements at 8 C.F.R. § 214.2(h)(5).

EAC 08 006 53665

Page 3

As the petitioner has overcome the grounds of the director's decision, and as the evidence of record supports approval of the petition, the appeal will be sustained, and the petition will be approved.

ORDER: The appeal is sustained. The petition is approved.