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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 16 2011

IN RE: Petitioner: [REDACTED]  
Beneficiaries: [REDACTED]

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.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved, although the matter is moot due to the passage of time.

The petitioner is engaged in landscape maintenance and it seeks to employ the beneficiaries as landscape 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 March 1, 2010 until October 31, 2010.

The director denied the petition on February 9, 2010, concluding that the petitioner failed to present sufficient evidence to demonstrate that the beneficiaries will be working in the same work location. The director noted that the record does not suggest that the beneficiary would perform services limited to a single "area of employment" defined by a geographically commutable distance. The director further noted that the "evidence suggests that the stated worksites are contained in a much larger area that is geographically separated from the petitioner's stated office location by large distances and separate counties that do not share a common border with that of the county in which petitioner's office is located."

The petitioner filed a motion to reopen and a motion to reconsider that was dismissed by the director. The petitioner subsequently filed the current appeal.

In response to the director's request for evidence, the petitioner noted that all of the beneficiaries will work as landscaping and groundskeeping laborers. The petitioner further stated that the worksite location of the beneficiaries is the petitioner's headquarters and also explained that "although we travel to our clients' homes and businesses to provide landscaping services, our employees report to work at headquarters each day and return to headquarters each day." The petitioner further stated that on the Form ETA Form 9142, it indicated that the work performed by the beneficiaries will be located in eight counties. The petitioner explained that six of the eight counties are located in [REDACTED] Area, and the two remaining counties, Larimer and Weld are not included in that MSA but those counties are within normal commuting distances since they are located near the Denver-Aurora-Broomfield MSA.

On appeal, the petitioner reiterates that the eight counties stated on the Form 9142 are the only locations where the beneficiaries will work. The petitioner stated that if it provides services in locations outside of the counties listed on the Form 9142, it will not send H-2B workers but instead will only send permanent workers.

On appeal, the petitioner has overcome the concerns addressed in the director's decision. Moreover, sufficient evidence has been submitted to establish that the beneficiaries will work in the same location as required by the regulations at 8 C.F.R. 214.2(h)(2)(ii). Furthermore, the petitioner submitted an itinerary for all of the beneficiaries as required in the regulations at 8 C.F.R. § 214.2(h)(2)(i)(B).

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. The petition is approved.