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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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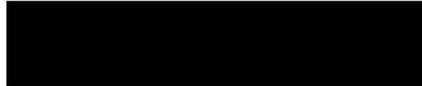


FILE: 

Office: CALIFORNIA SERVICE CENTER

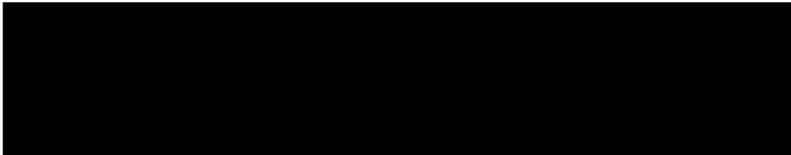
Date: **MAR 21 2011**

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:



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 March 22, 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 some worksite locations were in other states or in locations that required overnight stays and thus, these locations were not commutable and were not in the same location. The director also denied the petition because the Form 9142 listed 28 counties within Illinois but it did not list worksite locations in Indiana and Wisconsin even though the petitioner performs services in those locations.

In response to the director's request for evidence, the petitioner stated the following:

The company provides landscape management services to approximately 274 clients at 740 sites in Illinois. Ninety (90%) of work performed by the company takes place within the Chicago MSA (made up of McHenry, Lake, DeKalb, Kane, Dupage, Cook, Kendall, Will, and Grundy counties). Counties outside the MSA are indicated on Form ETA 9142 primarily because of work performed for one client, Burger King ("BK"). LCM services BK locations across the Midwest. (A complete list of these locations is included with this response.) All BK locations in Illinois that are outside the MSA are serviced by crews that depart from the Aurora branch. Many of these locations can be reached within a day's time, can be serviced, and crews can return in the same day. Some, including BK locations in Effingham County and counties further south, are too far away for crews to service same-day. When crews travel to these further locations they stay overnight, providing services at BK locations on the way to the furthest locations and on the way back. LCM covers the cost of overnight lodging, pays employees a per diem, and pays employees for drive time while on the route.

In addition, on appeal, the petitioner asserts that the beneficiaries will only work within the state of Illinois in the 28 counties listed on the Form 9142. The petitioner further asserts that the beneficiaries will not perform any services outside the state of Illinois.

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 regulation 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 regulation 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.