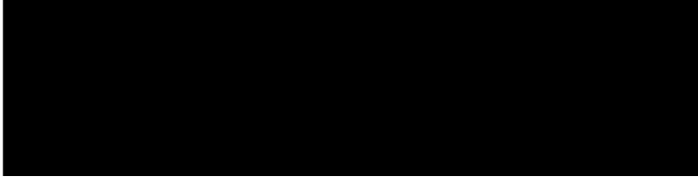


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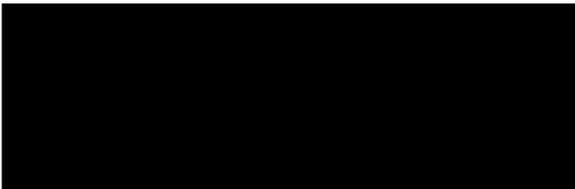
D4

FILE: EAC 07 208 51669 Office: VERMONT SERVICE CENTER Date: DEC 14 2007

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.

Robert P. Wiemann
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 director's decision will be affirmed and the petition will be approved for the period of established need although the matter is moot due to the passage of time.

The petitioner operates and manages all-inclusive vacation resorts in over 30 countries. It desires to extend its authorization to employ the beneficiaries as sports instructors 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) from May 1, 2007 to November 1, 2007. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be made because the petitioner did not establish that its need for the beneficiaries' services is temporary.

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 petitioner's need for temporary workers, based on the petitioner's occupancy chart, appears to be from May through September and not through November, as requested by the petitioner. The director's decision 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 Part 5, item 8 that the dates of intended employment are from May 1, 2007 to November 1, 2007. To substantiate its need for the intended dates of service, the petitioner provided a copy of its occupancy chart showing the percentage of occupants for the period April 29, 2006 through April 25, 2007. The report shows the occupancy rate to be from 40-80 percent from April 29, 2006 to May 27, 2006, with an increase to 80-100 percent from May 27, 2006 through September 2, 2006. The occupancy rate varied from September 2, 2006 to March 14, 2007 but began to steadily rise from March 14, 2007 through April 25, 2007.

After review of the documentary evidence contained in the record, the petitioner has provided sufficient countervailing evidence to establish that its need for the beneficiaries' services is from May 2007 to September 2, 2007. The petition will be approved for the period of established need. The Vermont Service Center will issue the appropriate approval notice.

The regulation at 8 C.F.R. § 214.2(h)(9)(ii)(B) states that, if a petition is approved after the date the petitioner indicates that the service will begin, the approved petition and approval notice should show a validity period commencing with the date of approval and ending with the date requested by the petitioner.

It is noted that the petitioner requested the beneficiaries' services from May 1, 2007 to November 1, 2007. However, the documentation provided only established a peakload need for the beneficiaries' services from May 1, 2007 through September 2, 2007. Therefore, the petition will be approved for the period of established need, although the matter is moot due to the passage of time because the period of intended employment has already expired.

ORDER: The decision of the director, dated December 5, 2007, is affirmed. The nonimmigrant visa petition is approved for the period of established need from May 1, 2007 until September 2, 2007, although the matter is moot due to the passage of time.