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FILE: EAC 07 183 50049 Office: VERMONT SERVICE CENTER Date: NOV 06 2007

IN RE: Petitioner:
Beneficiaries:



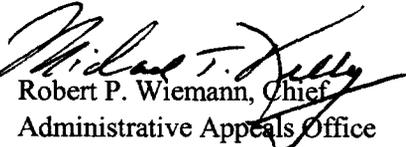
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

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). The decision of the director will be affirmed and the petition will be approved for the period of established need.

The petitioner operates a commercial concrete company. It desires to employ the beneficiaries as laborers from April 1, 2007 to January 31, 2008. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be made because the petitioner had not provided an original copy of the Form ETA 750 with an original signature as required.

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 the services to be performed is temporary. The director's decision is now before the AAO for review.

In his letter dated May 14, 2007, the petitioner states that the original copy of the Form ETA 750 with an original signature as required was sent to the Texas Workforce Commission along with the recruitment results, the letter sent to the State Union and the tear sheets. The petitioner's statement is substantiated by a letter dated March 15, 2007 from its representative, Centex Consulting, which states that the one original ETA 750 with original signature to replace the faxed copy was enclosed in the letter. Absent any derogatory evidence, the petitioner's statement is taken to be credible.

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 April 1, 2007 until January 31, 2008. To substantiate its need for the intended dates of service, the petitioner provided a copy of its monthly payroll report, for the 2005 calendar year, for temporary and permanent workers. The report shows that permanent workers were employed throughout the 2005 calendar year and that temporary workers were employed from March through December. Temporary workers were not employed by the petitioner from January through February of 2005.

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

The AAO notes that, apparently by clerical error, the director's decision failed to list one of the ten workers on whose behalf the petition was filed, namely, the [REDACTED] who is named at both Attachment 1 to the Form I-129 and the petitioner's attestation of returning H-2B workers. As the record of proceedings contains

no indication that the petitioner withdrew this person from consideration for the benefits of the petition, he is included among the workers for whom the director's decision will be affirmed and the petition approved.

ORDER: The decision of the director is affirmed. The nonimmigrant visa petition is approved for the period of established need from April 1, 2007 until December 31, 2007.