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U.S. Citizenship
and Immigration
Services

D4

FILE: EAC 08 020 50565 Office: VERMONT SERVICE CENTER Date: JAN 16 2008

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.

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 decision of the director will be affirmed and the petition will be approved.

The petitioner operates a Brazilian steakhouse located in Myrtle Beach, South Carolina. The petitioner desires to continue to employ the beneficiaries as chef-trainers to complete the training of its staff of 60 United States workers to be “churrasqueiros” (Brazilian-style meat specialists) from October 31, 2007 to October 29, 2008. The initial petition filed by the petitioner was valid from November 4, 2006 until October 30, 2007. The Department of Labor (DOL) determined that a temporary labor certification by the Secretary of Labor could not be made because the petitioner had not established a temporary need. Further, the DOL stated in its decision that the South Carolina Employment Security Commission (SCES) referred three applicants to the petitioner and the petitioner’s statement of recruitment results did not mention the outcome of these referrals.

The director determined that sufficient countervailing evidence has been submitted to overcome the objections made by the DOL. The director also determined that the evidence presented by the petitioner showed that qualified persons in the United States are not available, that the employment policies of the Department of Labor have been observed and that the need for the services to be performed is temporary.

Upon review of the evidence contained in the record, the decision of the director is found to be correct. The totality of evidence establishes a one-time occurrence as defined in the H-2B regulations and extraordinary circumstances that justify the beneficiaries’ H-2B employment in accordance with 8 C.F.R. § 214.2(h)(6)(ii)(B). The petitioner submitted an outline of the training program and explains that the training program was not completed because only six of the 15 workers initially petitioned for were admitted into the United States to train 60 United States workers. The petitioner also submitted documentation to show that five of the six workers were admitted into the United States on February 10, 2007, three months after the initial petition was approved and the sixth worker was not admitted into the United States until July 25, 2007. Therefore, the petitioner states that the training program was left extremely short handed and could not be fully implemented since there was an insufficient amount of trainers.

Further, the petitioner explains that it was unaware that SCES had received any resumes. The petitioner also explains that it was never advised by the Coastal Workforce Center (CWC), which is the local office, that it had received the applicant’s resumes. The petitioner states that CWC keeps no log of faxes or other contacts sent to employers. The petitioner goes on to state that a supervisor at CWC later sent the petitioner the summary of the three resumes mentioned in the DOL’s decision. The summary of the three resumes, which is now a part of the record of proceeding, shows that the applicants were not qualified for the proffered positions of chef-trainers. Accordingly, the petitioner has established that a temporary event of short duration has created a need for temporary workers. The Vermont Service Center will issue the appropriate approval notice.

ORDER: The decision of the director is affirmed. The nonimmigrant visa petition is approved.