

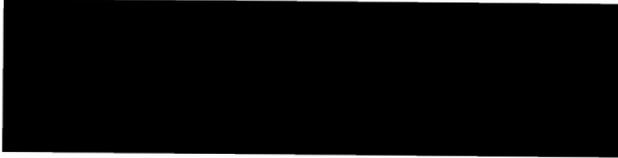
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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: EAC 09 030 50142 Office: VERMONT SERVICE CENTER

Date: 08 JAN 2009

IN RE: Petitioner:
Beneficiaries:



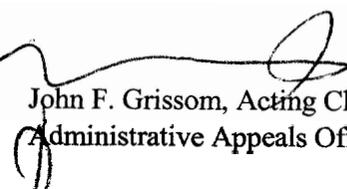
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

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.


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the Director, California 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 wishes to employ the beneficiary as a live-in home health aide 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 November 8, 2006 until July 6, 2009. The Department of Labor (DOL) determined that the petitioner had submitted insufficient evidence for the issuance of a temporary labor certification by the Secretary of Labor.

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 Department of Labor have been observed, and that the need for the services to be performed is a one-time occurrence.

As noted by the director, the petitioner seeks to recapture 96 days in which the beneficiary spent outside of the United States. The director correctly stated that there is no provision in the law or regulation which allows an H-2B nonimmigrant to recapture time. The regulations under INA § 101(a)(15)(H)(i)(B) and INA § 101(a)(15)(L) allow recapturing for beneficiaries in H-1B or L-1 nonimmigrant status only. Thus, the current petition will be approved until March 31, 2009.

Upon review of the evidence contained in the record, the decision of the director is found to be correct. The Vermont Service Center will issue the appropriate approval notice.

ORDER: The decision of the director is affirmed. The nonimmigrant visa petition is approved until March 31, 2009.