

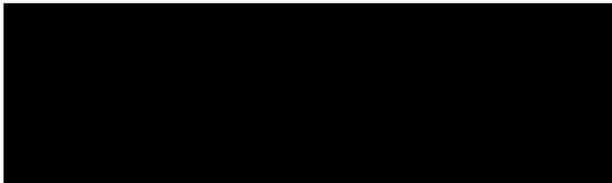
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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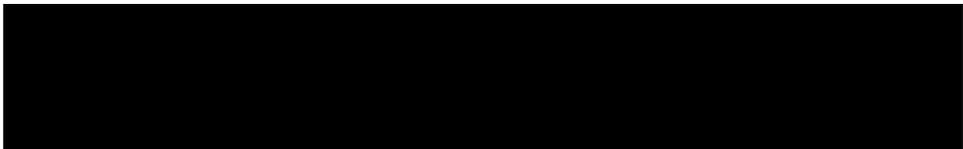
MAR 16 2011

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the California Service Center revoked the previously approved nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition is not revoked.

The petitioner is engaged in snow removal services, and it seeks to employ 32 unnamed beneficiaries as snow shovelers pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(ii)(b).

On May 3, 2010, the director revoked the petition concluding that the petitioner did not submit sufficient evidence in rebuttal to the USCIS' Notice of Intent to Revoke and has not overcome the grounds for revocation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation, dated August 12, 2009; (2) the director's notice of intent to revoke (NOIR), dated March 9, 2010; (3) the petitioner's response to the NOIR; (4) the director's May 3, 2010 notice of revocation; and (5) the Form I-1290B, filed on June 2, 2010. The AAO reviewed the record in its entirety before issuing its decision.

On August 12, 2009, the petitioner filed the Form I-129 (Petition for Nonimmigrant Worker) to employ 32 unnamed beneficiaries in the H-2B classification for the period from October 1, 2009 until April 30, 2010. The director approved the petition. On March 9, 2010, the director notified the petitioner of her intent to revoke approval of the H-2B petition. In the notice of intent to revoke, the director stated the reason for revocation as follows:

The petitioner requested H-2B beneficiaries to work in snow removal in Colorado. A review of the beneficiaries' visa and extension history indicates that in the months not working for the petitioner, the beneficiaries work for a related firm, Vargas Property Services, which is based out of the same office. Evidence indicates that the petitioner and Vargas Property Services are owned and operated by the same individuals and employ the same beneficiaries' year round, evading H-2B regulation that the petitioner must establish that the beneficiary's nonagricultural services or labor is temporary based upon a seasonal need. 8 C.F.R. § 214.2(h)(6)(ii)(B)(2) states that for the nature of the petitioner's need to be a seasonal need, the petitioner must establish that the services or labor is traditionally tied to a season of the year by an event or pattern and is of a recurring nature. The petitioner must specify the period(s) of time during each year in which it does not need the services or labor. Therefore, employment is not seasonal if the period during which the services or labor is not needed is unpredictable or subject to change or is considered a vacation period for the petitioner's permanent employees.

In a response letter, dated April 5, 2010, the petitioner responded to the director's concern as follows:

[The petitioner] and [REDACTED] are separate and distinct corporate entities. The former is owned and operated by [REDACTED], while the latter is owned and operated by [REDACTED]. The companies do utilize some of the same facilities and equipment, but that does not mean the companies should be treated as one company. In addition to being legally separate (see attached federal quarterly wage reports and federal tax returns), the companies differ in the services each provides. [REDACTED] is landscape design, installation, and maintenance firm providing its customers with landscaping services - the majority of which it does in the spring, summer, and fall. [The petitioner] is a winter snow removal company, providing customers with snow and ice management services - something it can only do in the winter. During the winter, when [the petitioner] experiences its highest business volume, [REDACTED] labor needs are at an all-time low. During [REDACTED]'s peak periods for landscaping, [the petitioner] is closed.

The petitioner submitted documentation evidencing that the petitioner and [REDACTED] are two separate corporate entities with different Employer Identification Numbers, separate certificates of incorporation, and each company is owned by two different people. In addition, the petitioner has a different seasonal need for the winter months for snow shovelers while [REDACTED] has a seasonal need of landscape laborers for the summer months.

The AAO concludes that [REDACTED] Services is a separate and distinct company from the petitioner, each independently operating a seasonal business. The regulations do not prohibit separate companies to apply for H-2B workers for their own seasonal needs. In the present case, the petitioner satisfied all of the requirements for eligibility for H-2B visa status for its winter months.

The petitioner presented sufficient evidence to overcome the grounds for revocation. For the reasons discussed above, the appeal will be sustained and the director's revocation decision will be withdrawn. The petition will not be revoked.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 the Immigration and Nationality Act, 8 U.S.C. § 1361. Here, the petitioner has met that burden.

ORDER: The appeal is sustained. The approval of the petition is not revoked.