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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: LIN 05 063 51154 Office: NEBRASKA SERVICE CENTER Date: MAR 9 2 2005

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:

[redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center. Subsequently, counsel on behalf of the petitioner properly filed an appeal. In lieu of forwarding the appeal to the Administrative Appeals Office (AAO), the director decided to reopen the proceeding on his own motion. On motion, the director decided that the petition should be denied and certified his decision to the Administrative Appeals Office (AAO) for review. The decision of the director will be affirmed.

The petitioner engages in long haul trucking. It desires to employ the beneficiaries as tractor-trailer truck drivers for five months. The Department of Labor determined that a temporary labor certification by the Secretary of Labor could be made. The director determined that the petitioner had not provided sufficient evidence to conclude that its need for additional labor is due to a seasonal or short-term demand, and that this need for additional labor is not an ongoing and structural part of the petitioner's operations and denied the petition. A subsequent appeal was properly filed. The director decided to reopen the case on his own motion. On motion, the director determined that the petitioner's need for 100 additional workers could not be considered a supplement to its permanent staff of 35 workers since the additional workers make up the largest portion of the petitioner's workforce. The director also determined that the petitioner's need for additional labor appears to result primarily from the petitioner's need to reform his business following financial difficulties, and not from a seasonal or short-term demand.

Counsel was given the opportunity to submit a brief or written statement, within 30 days of this certification notice. To date, no additional evidence has been received. Therefore, the record is considered complete.

The petitioner seeks the services of the beneficiaries on a peakload basis. After review of the evidence contained in the record, the decision of the director is found to be correct. The petitioner has not demonstrated through the evidence submitted that it regularly employs permanent workers to perform services or labor at the place of employment and that it needs to supplement its permanent staff at the place of employment on a temporary basis due to a seasonal or short term demand. The petitioner has not carefully documented the peakload situation through financial data on its usual workload and staffing needs to show that a special need exists to haul fresh produce that is unlike its regular workload. The petitioner must show through financial or employment records that it is experiencing an unusual increase in the demand for its services.

Counsel also states that the temporary need is a blend of both peakload and one-time occurrence. However, for the petitioner's need to be a one-time occurrence, the petitioner must establish that a temporary event of short duration has created the need for temporary workers. The petitioner explains that its peak operations are from January 1 through May 31 and also include October through December. The petitioner has not demonstrated its need to be of a short duration. Further, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). The petitioner has not established that the need for the beneficiary's services is peakload or a one-time occurrence and temporary.

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