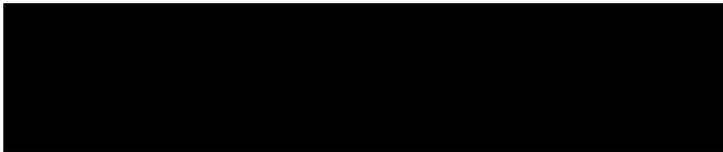




U.S. Citizenship
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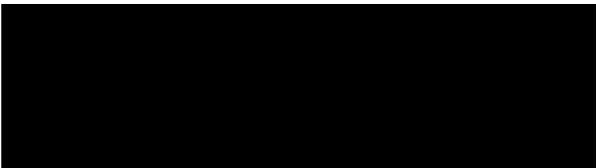
D2

FILE: EAC 03 257 52056 Office: VERMONT SERVICE CENTER Date: AUG 02 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner operates a motel. It desires to employ the beneficiary as a housekeeper for 11 and one-half months. The Department of Labor (DOL) determined that a temporary labor certification by the Secretary of Labor could not be made. The director determined that the petitioner had not established that its need for the beneficiary's services is temporary.

On appeal, counsel states that the petitioner's need for hiring a housekeeper is temporary and due to an increase in its business.

Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(ii)(b), defines an H-2B temporary worker as:

an alien having a residence in a foreign country which he has no intention of abandoning, who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country

....

The test for determining whether an alien is coming "temporarily" to the United States to "perform temporary services or labor" is whether the need of the petitioner for the duties to be performed is temporary. It is the nature of the need, not the nature of the duties, that is controlling. *Matter of Artee Corp.*, 18 I&N Dec. 366 (Comm. 1982).

As a general rule, the period of the petitioner's need must be a year or less, although there may be extraordinary circumstances where the temporary services or labor might last longer than one year. The petitioner's need for the services or labor shall be a one-time occurrence, a seasonal need, a peakload need, or an intermittent need. 8 C.F.R. § 214.2(h)(6)(ii)(B). The petition indicates that the employment is intermittent and that the temporary need recurs annually.

To establish that the nature of the need is "intermittent," the petitioner must demonstrate that it has not employed permanent or full-time workers to perform the services or labor, but occasionally or intermittently needs temporary workers to perform services or labor for short periods. 8 C.F.R. § 214.2(h)(6)(ii)(B)(4).

The nontechnical description of the job on the Application for Alien Employment Certification (Form ETA 750) reads:

Clean lobbies, halls, guestrooms and bathrooms, change sheets and towels, vacuum carpets, dust furniture, empty wastebaskets and mop bathroom floors. Scrub and buff floors, spot clean walls and windows, replenish room supplies and report need for repairs to equipment, furniture, building and fixtures.

In determining whether an employer has demonstrated a temporary need for an H-2B worker, it must be determined whether the job duties, which are the subject of the temporary application, are permanent or temporary. If the duties are permanent in nature, the petitioner must clearly show that the need for the

beneficiary's services or labor is of a short, identified length, limited by an identified event. Based on the evidence presented, a claim that a temporary need exists cannot be justified.

In order for the petitioner's need to be intermittent, the petitioner must demonstrate that it has not employed permanent or full-time workers to perform the services or labor. The petition indicates that the employer currently has five employees. Moreover, the petitioner's need to have an additional worker perform these services has not been shown to be intermittent and temporary. The services to be performed by the beneficiary are ongoing. The petitioner has not submitted any financial evidence to demonstrate that its business activity has formed a pattern where its needs for housekeeping services are occasional or intermittent or for short periods. The intended employment is for 11 and one-half months. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.