

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D4

FILE: LIN 06 135 51078 Office: NEBRASKA SERVICE CENTER Date: **AUG 15 2006**

IN RE: Petitioner: [Redacted]
Beneficiary: [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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be summarily dismissed. The petition will be denied.

The petitioner is a resort hotel and restaurant. It seeks to employ the beneficiaries as housekeepers for five months 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).

The Department of Labor (DOL) issued a temporary labor certification, but the director determined that the petitioner failed to establish that it had a peakload need for the beneficiaries' services. In his decision the director noted that the petitioner had failed to comply with the request for additional evidence to establish that it regularly employs permanent workers to perform housekeeping duties, that it needs to supplement the permanent staff on a temporary basis due to a seasonal or short-term demand, and that the temporary workers will not become part of the petitioner's regular operation. Accordingly, the petitioner failed to establish that its need for the temporary housekeepers is peakload.

On appeal counsel requests that the previously submitted documentation be reexamined, and asserts that the petitioner has already established the temporary nature of the employment. In a follow-up brief counsel indicates that the petitioner filed a previous H-2B petition in 2005, which was approved after the submission of documentation demonstrating the petitioner's peakload need for housekeepers. Counsel contends that the information submitted in that petition should be accessed in support of the instant petition.

The AAO has reviewed the record in this proceeding and determines, contrary to counsel's assertion, that no evidence has been submitted demonstrating the petitioner's peakload need for housekeepers, as requested in the RFE. Whatever documentation may have been submitted in connection with a previous H-2B petition filed by the petitioner, it is not before the AAO in the instant proceeding. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, Citizenship and Immigration Services (CIS) is limited to the information contained in the petitioner's record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Thus, the current petition cannot be approved unless the record establishes current eligibility. As discussed above, the record does not establish the petitioner's current eligibility because it fails to show a peakload need for the employment of temporary housekeepers.

As specified in 8 C.F.R. § 103.3(a)(1)(v), "[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." The petitioner has not specifically identified any erroneous conclusion of law or statement of fact in the director's decision. No new facts or legal arguments have been submitted, nor any additional documentary evidence. Accordingly, the appeal must be summarily dismissed.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

ORDER: The appeal is summarily dismissed. The petition is denied.