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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: LIN 01 053 50455 Office: Nebraska Service Center

Date: MAR 12 2001

IN RE: Petitioner: [Redacted]
Beneficiaries: [Redacted]

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

IN BEHALF OF PETITIONER: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

[Signature]
Associate Commissioner
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the Director, Nebraska Service Center, and certified to the Associate Commissioner for Examinations for review. The director's decision will be affirmed and the petition will be approved.

The petitioner engages in the business of landscaping. The petitioner desires to employ the beneficiaries as snow removal and snow shovelers for a period of four months. The Department of Labor determined that a temporary labor certification by the Secretary of Labor could not be made. The director determined that a temporary need had been established and approved the petition. The director certified his decision to the Associate Commissioner for Examinations for review.

Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(ii), 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, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession....

Matter of Artee Corp., 18 I&N Dec. 366 (Comm. 1982), as codified in current regulations at 8 C.F.R. 214.2(h)(6)(ii), specified that 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. See 55 Fed. Reg. 2616 (1990).

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 must 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 for a Nonimmigrant Worker (Form I-129) indicates that the employment is seasonal and that the temporary need is recurring annually.

The regulation at 8 C.F.R. 214.2(h)(6)(ii)(B)(2) states 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 shall specify the period(s) of time during each year in which it does not need the services or labor. The 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. The director approved the petition, finding that the employment offered is seasonal and of a temporary nature.

Form I-129 indicates that the positions offered were those of groundkeepers. In its submission of countervailing evidence, the petitioner established that the principal duties of the beneficiaries would be that of snow removal. The petitioner explained that during the winter months, it needs workers to help fulfill its snow removal contractual agreements. The petitioner submitted sufficient evidence to establish that qualified persons in the United States are not available and that the employment policies of the Department of Labor have been observed. Consequently, the petitioner has established that the nature of the need for the services of the beneficiaries is temporary.

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 met that burden.

ORDER: The director's decision is affirmed. The nonimmigrant visa petition is approved.