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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

[Redacted] Public Copy

File: SRC 01 033 52624 Office: Texas Service Center Date:

MAR 16 2001

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)

IN BEHALF OF PETITIONER: [Redacted]

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

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
for Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the Director, Texas Service Center, who certified the decision to the Associate Commissioner for Examinations for review. The decision of the director will be affirmed.

The petitioner engages in forestry and reforestation. It desires to employ the beneficiaries as tree planters for a period of eight months. The Department of Labor determined that a temporary labor certification by the Secretary of Labor could not be made because the employer had not established that the beneficiaries would not have an adverse effect on wages and working conditions of U.S. workers similarly employed. The Department of Labor also determined that the employer's advertised productivity standard of 2400 and 2800 trees planted per 8-hour day in Louisiana and Mississippi, respectively, exceeds the regional standard of 2000 trees planted per 8-hour day. Further, the Department of Labor determined that the transportation charge of \$4.00 per day for each worker causes the wages of workers in the Kentucky and Tennessee portions of the itinerary to fall below the \$5.15 per hour Federal minimum wage rate. Finally, the Department of Labor decided that the employer had not submitted valid farm contractor certificates of registration as required by Department of Labor policies governing H-2B forestry workers. Upon review of the countervailing evidence submitted by the employer, the director approved the petition and certified its decision to this office 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....

The petition 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 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 seeks the services of the beneficiaries to plant seedling trees for reforestation in Mississippi, Tennessee,

Louisiana and Kentucky. The petitioner states that this task must be done from November 15, 2000 to July 31, 2001 to reforest timberlands. The employer has submitted sufficient countervailing evidence to overcome the reasons for the denial of the certification by the Department of Labor and has shown that the wages and working conditions of U.S. workers similarly employed would not be effected, qualified workers in the United States were not available, the employment policies of the Department of Labor have been observed, and the positions offered are 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 sustained that burden. Accordingly, as eligibility has been established, the petition will be approved.

ORDER: The decision of the director is affirmed. The petition is approved.