



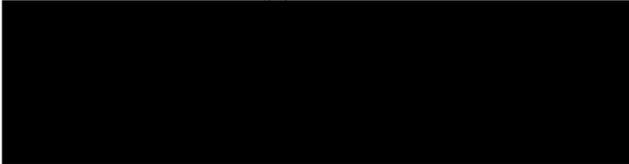
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U.S. Department of Justice

Immigration and Naturalization Service

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



File: SRC 01 158 52091 Office: Texas Service Center Date: 11 APR 2002

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)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director, who certified his decision to the Associate Commissioner for examinations for review. The director's decision will be affirmed.

The petitioner seeks to employ the beneficiaries as kitchen helpers for a period of five and one half months. The director denied the petition because it was not accompanied by a temporary labor certification from the Department of Labor. The certifying officer declined to issue a labor certification because the petitioner had not established that its need for the beneficiaries' services was temporary. The certifying officer stated:

The employer is a temporary staffing agency and in the business of supplying the labor needs of one or more customers and has an on-going permanent need for such workers outside the scope of the immediate request for the 25 aliens requested. The employer may consider filing a permanent [labor certification application] for such workers. The job offer is deemed to be for permanent employment and should be advertised and offered to U.S. workers on that basis.

Counsel has not submitted a brief or evidence in response to the notice of certification.

8 C.F.R. 214.2(h)(6)(iv)(A) requires that a petition for temporary employment in the United States be accompanied by a temporary labor certification from the Department of Labor, or notice detailing the reasons why such certification cannot be made. 8 C.F.R. 214.2(h)(6)(iv)(A) states that a petition not accompanied by temporary labor certification must be accompanied by countervailing evidence from the petitioner that addresses the reasons why the Secretary of Labor could not grant a labor certification.

The petitioner has not provided sufficient countervailing evidence in support of its assertion that its need for the services of the beneficiaries is temporary or that United States workers are not available. For example, the petitioner has not provided sufficient evidence of attempts to recruit United States worker for the position.

Matter of Artee Corporation, 18 I&N Dec. 366 (Comm. 1982), 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 for the duties to be performed is temporary. It is the nature of the need, not the nature of the duties that is controlling. The petitioner has needed kitchen helpers in the past and will need kitchen helpers in the future. Accordingly, it is concluded that the petitioner has not established that its need for the services of the 25 unnamed

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. The petitioner has not sustained that burden. Accordingly, the decision of the director will not be disturbed.

**ORDER:** The director's order is affirmed. The petition is denied.