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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 00 055 52068 Office: Texas Service Center

Date: AUG - 6 2002

IN RE: Petitioner:  
Beneficiaries



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 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:** This is a motion to reopen the Associate Commissioner for Examination's decision dismissing the appeal of the denial of the nonimmigrant visa petition. The motion to reopen will be granted and the previous decisions of the director and the Associate Commissioner will be affirmed.

The petitioner provides temporary and peak period hospitality industry staffing for major hotels, resorts, and convention facilities. The petition indicates that the petitioner seeks to employ the beneficiaries as housekeepers for an indefinite period. The certifying officer of the Department of Labor declined to issue a labor certification because the petitioner had not established a temporary need for the workers and the job offer is deemed to be for permanent employment. The director determined that a temporary need for the beneficiaries' services had not been established. The director's decision was affirmed by the Associate Commissioner on appeal.

On motion, the petitioner states that he does not understand its business classification by the Service as a staff leasing company. Further, the petitioner states that he does not know why the Service rejected the action of the State of Florida's Department of Labor approving of its H-2 nonimmigrant worker petition.

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. On motion, the president of the petitioning entity states that the petition filed by Cornelius England Company, Inc. is for

a period of a year, however, the extremely low unemployment in the companies service area has created a situation where the need is in fact for periods 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 indicates that the employment is a one-time occurrence and the temporary need is unpredictable.

The regulation at 8 C.F.R. 214.2(h)(6)(ii)(B)(1) states that for the nature of the petitioner's need to be a one-time occurrence, the petitioner must establish that it will not need workers to perform the services or labor in the future.

The petitioner states that the current low unemployment in the local area is a temporary event which has created a need for temporary workers. However, the petitioner cannot predict the unemployment rate, and therefore, cannot be certain it will not need workers to perform such services in the future.

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 states that seasonal staff is needed from October 15 through April 15, and then from June 15 through September 15 of each year. There are only two months out of each year where the petitioner will not be needing temporary staff to perform its services. Therefore, the petitioner has not shown how its need for temporary workers can be classified as seasonal employment.

The regulation at 8 C.F.R. 214.2(h)(6)(ii)(B)(4) states that for the nature of the petitioner's need to be an intermittent need the petitioner must establish 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.

The petitioner states that its need for services is for periods longer than one year due to the unemployment rate. Consequently, the petitioner has not established that it occasionally, or intermittently, needs temporary workers to perform services or labor for short periods.

The regulation at 8 C.F.R. 214.2(h)(6)(ii)(B)(3) states that for the nature of the petitioner's need to be a peakload need, the petitioner must establish that it regularly employs permanent workers to perform the services or labor at the place of employment

and that it needs to supplement its permanent staff at the place of employment on a temporary basis due to a seasonal or short-term demand and that the temporary additions to staff will not become a part of the petitioner's regular operation.

The petitioner states that it has no regularly employed workers other than management and office staff. Consequently, the petitioner has not shown that its need for temporary workers is a seasonal, peakload, intermittent or one-time occurrence.

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

Cleans rooms and halls, performing any combination of the following: "Move and arrange furniture. Turn mattresses. Makes beds, replenishes linens, dusts and/or polishes furniture, blinds, and fixtures, vacuums. Replenishes supplies, such as drinking glasses and writing supplies. Sorts, counts, folds, marks, or carries linens. May deliver mini-refrigerators, baby cribs, and rollaway beds to guest rooms. Performs minor personal services for guests.

These duties are ongoing and cannot be classified as duties that will not need to be performed in the future.

The Department of Labor states in its denial of the petitioner's labor certification that the petitioner is a temporary staffing agency that supplies the labor needs of one or more customers. It has been further established that the petitioner's business is to assign the beneficiaries to a client to supplement that client's workforce. Therefore, the petitioner has a permanent need for workers. The petitioner is required to demonstrate that its intention is to employ the specific beneficiaries for only a temporary period. Here, the petitioner has not established that it needs to employ the beneficiaries for only a temporary period. The petitioner's need for the services of the beneficiaries is permanent; the facility that needs the beneficiaries' services temporarily will not be the beneficiaries' employer.

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. Accordingly, the previous decisions of the director and the Associate Commissioner will be affirmed.

**ORDER:** The order of February 29, 2000 is affirmed. The petition is denied.