



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



DH

File: SRC 01 231 56009 Office: Texas Service Center Date: 28 AUG 2002

IN RE: Petitioner: [Redacted]
Beneficiary: [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: [Redacted]

[Faint stamp]

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, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a meat slaughter house. It desires to employ the beneficiaries as animal stunners for ten months. The Department of Labor determined that a temporary labor certification by the Secretary of Labor could be made. The director determined that the petitioner failed to meet the regulatory requirements by not including the names of the beneficiaries at the time of filing the petition and an exception could not be granted.

On appeal, counsel states that the petitioner was severely penalized by an unannounced change in policy.

The regulation at 8 C.F.R. 214.2(h)(2)(iii) states in pertinent part that:

Named beneficiaries. Nonagricultural petitions must include the names of beneficiaries and other required information at the time of filing. Under the H-2B classification, exceptions may be granted in emergent situations involving multiple beneficiaries at the discretion of the director, and in special filing situations as determined by the Service's Headquarters.

Counsel states that seasonal, temporary employment under the H-2B program constitutes the same emergency situation that allows agriculture to petition for multiple unnamed workers, namely, an employment-based need that cannot put off securing workers simply to name and rename unskilled workers through the INS and finally, to the State Department. However, the petitioner has not presented an emergent situation that would allow the Service to waive the names of the temporary nonagricultural workers at the time of filing. Counsel also states that the reason for waiting until the consulate receives the approval of the petition from the Service is because, should there be last minute problems, unskilled workers cannot afford to stay while awaiting a resolution. Again, the reasons given by counsel do not present an emergent situation but rather an inconvenience for the petitioner if the beneficiaries named cannot accept the employment offer.

Counsel also states that the petition was filed in good faith under the existing INS policy regarding unnamed beneficiaries. Counsel states that to add such an unannounced requirement of this petitioner at the last minute creates an emergent situation for which the waiver was intended. However, this regulation was in effect at the time of the petition's filing.

On appeal, counsel has provided the names of five workers that the petitioner has been able to contact and interview and to whom the petitioner has made an offer of employment. No beneficiaries were named at the time of filing the petition, as required by the cited regulation. Therefore, the petition may not be approved.

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.

ORDER: The appeal is dismissed.